Case and Comment

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Charity for the Heterodox

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THE preamble to the Statute of Charitable Uses[1] did not mention trusts for religious purposes. This omission seems to have been intentional. Sir Francis Moore in his famous reading upon the statute said: "A gift of lands, etc., to maintain a chaplain or minister, to celebrate divine service, is neither within the letter nor meaning of this statute; for it was of purpose omitted in the penning of the act, lest the gifts intended to be employed upon purposes grounded upon charity might, in change of times (contrary to the minds of the givers), be confiscate into the King's treasury. For religion being variable, according to the pleasure of succeeding princes, that which at one time is held for orthodox may at another be accounted superstitious, and then such lands are confiscate."[2] But of course, it has long been settled that the promotion of religion is a charitable purpose.[3] But is this true of all religions? Or is it true only of those which are "according to the pleasure of the prince" for the time being; or according to the pleasure of his more powerful successor, the sovereign people?

In this country, fortunately, we are not troubled as they are in England with the remnants of the old English statutes as to superstitious uses.[4] With us the problem is whether the religion to be promoted is positively illegal or against public policy. A disposition of property is clearly invalid when made to promote the purposes of organizations which, under the cloak of religion, advocate violations of the criminal law, or advocate the doing of acts which are for some reason against public policy.

The two kinds of offenses which are most frequently connected with religious organizations are sexual offenses and blasphemy. As to the first the law is tol-

[1] 43 Eliz. chap. 4 (1601).

[2] Duke, Charitable Uses, 131.

[3] Pember v. Knighton, Duke, Charitable Uses, 382.

[4] In England bequests for the saying of masses for the soul of the testator or of other persons are still held to be illegal as superstitious uses. The law is otherwise in Ireland and in Canada. But in England and in Ireland to-day bequests to or for the benefit of monastic bodies are illegal. Ellard v. Phelan [1914] 1 Ir. R. 76. But a trust for the decoration of a church is charitable even though the church be attached to a monastery. Re Greene [1914] 1 Ir. R. 305. And a trust for the individual members of a monastic order is valid. Re Smith [1914] 1 Ch. 937, 83 L. J. Ch. N. S. 687, 110 L. T. N. S. 898, 30 Times L. R. 411, 58 Sol. Jo. 494. See Tudor, Charities, pp. 4–8, 44, 45.

erably clear. Whether the offense is such as to constitute a violation of the criminal law or not, it is so far against public policy that a disposition of property which tends to encourage its commission is illegal. Polygamy and free love and indecency[5] are heartily condemned by our law.

A more difficult question is that in regard to blasphemy. In 1797, the publisher of Paine's Age of Reason was convicted of this crime, and sentenced to a year's imprisonment, Lord Kenyon remarking as he imposed this sentence, that "this publication is horrible to the ears of a Christian."[6] In Briggs v. Hartley,[7] decided in 1850, the testator left a legacy "for the best original essay on natural theology, treating it as a science, and demonstrating the adequacy and sufficiency of natural theology when so treated and taught to constitute a true, perfect, and philosophical system of universal religion." This legacy was held illegal as not consistent with Christianity. In Cowan v. Milbourn,[8] decided in 1867, the defendant agreed to rent rooms to the plaintiff, the secretary of the Liverpool Secular Society, for the delivery of lectures to advance the views of the society, the lectures including such subjects as "The Character and Teachings of Christ; the Former Defective, the Latter Misleading." It was held that the contract was illegal on the ground that the lectures to be delivered were blasphemous.

But we now begin to observe a change of attitude. In 1883, a member of Parliament was indicted for publishing blasphemous libels in a paper called the "Freethinker," contending that the God of the Bible is cruel and heartless.[9] Lord Coleridge, Ch. J., charging the jury, said that if the defendant argued with due gravity and propriety he was not guilty of any crime; that the defendant would be guilty only if his words are "calculated and intended to insult the feelings and the deepest religious convictions of the great majority of the persons amongst whom we live; and, if so, they are not to be tolerated any more than any other nuisance is tolerated." In other words, it is no longer a question of an offense against God; it is a question of public nuisance.[10] The advocacy of any form of belief no matter how inconsistent with Christianity, even though it attacks the fundamentals of Christianity, is not criminal, unless in such a form or manner as to be a nuisance. Blackstone's chapter[11] upon offenses against God and religion has become quite obsolete.

And finally in 1915 comes the decision of the Court of Appeal in the case of Re Bowman.[12] In that case a testator left property upon trust for the Secular Society Ltd. of London, a registered company. Its objects were, *inter alia*, to promote the principle that human conduct should be based upon natural knowledge, and not upon supernatural belief, and that human welfare in this world is the proper end of all thought and action; to promote the abolition of all support by the state of any particular form of religion; to promote universal secular education without any religious teaching in public schools; to promote the recognition of Sunday by the state as a purely civil institution for the benefit of the people and the repeal of all Sabbatarian laws. The question of whether this trust was for a charitable purpose was not presented and was not passed upon by the court. But it was held that the trust was not against public policy. The court expressly overruled Briggs v. Hartley and Cowan v. Milbourn. The Master of the Rolls, Lord Cozens-Hardy, said: "It is to my mind almost shocking to hold that the publications of Positivists, who do not admit, and probably even deny, the existence of a God, are

[5] But we are far from a solution of the question of what is indecent; the present day problem in regard to this matter centers around the question of the giving of information concerning and the discussion of questions of sex, in particular the question of birth control.

[6] Rex v. Williams, 26 How. St. Tr. 653.

[7] 19 L. J. Ch. N. S. 416.

[8] L. R. 2 Exch. 230, 36 L. J. Exch. N. S. 124, 16 L. T. N. S. 290, 15 Week. Rep. 750.

[9] Reg. v. Bradlaugh, 15 Cox, C. C. 217.

[10] See also Reg. v. Ramsay, 15 Cox, C. C 231. Cab. & El. 126.

[11] Bk. I. chap. 4.

[12] [1915] 2 Ch. 447, [1915] W. N. 175, 31 Times L. R. 389.

necessarily blasphemous. I think the older view must now be regarded as obsolete."

In this country we have several decisions on this question. In People v. Ruggles [13] in 1811, a conviction for blasphemy was upheld. The defendant here attacked the doctrine of the Immaculate Conception. The words spoken were needlessly coarse and offensive. They were probably rightly held to constitute a nuisance, although the language of Kent, Ch. J., undoubtedly went further than was necessary.[14] In Updegraph v. Com.[15] in 1824, the defendant was indicted for maliciously vilifying the Christian religion by saying that "the Holy Scriptures are a mere fable, that they are a contradiction, and that, although they contain a number of good things, yet they contain a great many lies." These expressions were uttered in the course of an argument on religious questions in a debating association. The court was of opinion that this constituted a crime; observing in regard to the debating society that "it would prove a nursery of vice, a school of preparation to qualify young men for the gallows, and young women for the brothel." But clearly to-day it is no crime in this country to express views subversive of the fundamental doctrines of Christianity, unless in a manner which would make the act a public nuisance. See Wharton, Crim. Law, 11th ed. § 24.

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PROF. AUSTIN W. SCOTT

In Zeisweiss v. James,[16] decided in 1870, a testator devised land to the "Infidel Society in Philadelphia, hereafter to be incorporated, and to be held and disposed of by them for the purpose of building a hall for the free discussion of religion, politics," etc. Sharswood, J., speaking for the court, was of the opinion that the devise was illegal. He said: "Even if Christianity is no part of the law of the land, it is the popular religion of the country, an insult to which would be indictable as directly tending to disturb the public peace. The laws and institutions of this state are built on the foundation of reverence for Christianity. To this extent, at least, it must certainly be considered as well settled that the religion revealed in the Bible is not to be openly reviled, ridiculed, or blasphemed, to the annoyance of sincere believers who compose the great mass of the good people of the commonwealth." But there was no evidence that the society was intended to insult Christianity; there was no evidence of lack of sincere purpose to promote views conscientiously entertained. It is an open question to-day whether the courts in this country are yet ready to accept the present English doctrine, laid down in Re Bowman.

Whenever the question has arisen in regard to the disposition of property for the promotion of religions whose doctrines are not actually opposed to the

[13] 8 Johns. 290, 5 Am. Dec. 335.

[14] See also State v. Chandler, 2 Harr. (Del.) 553.

[15] 11 Serg. & R. 394.

[16] 63 Pa. 465, 3 Am. Rep. 565.

fundamental tenets of Christianity, the courts have had no difficulty in holding that the disposition is charitable. Thus, in Thornton v. Howe,[17] a bequest was made upon trust to publish "the sacred writings of Joanna Southcote." The fundamental doctrine of the religion of this eccentric person was that she was to give birth to the Messiah. The legacy was upheld, the court remarking that there was nothing in her writings "which could shake the faith of Christians." And yet it is hard to see how any reasonable person would be led by the absurdities of the prophetess to embrace Christianity. So, in this country, bequests for the benefit of Christian Science,[18] spiritualism[19] and "for the furtherance of the broadest interpretation of metaphysical thought"[20] are all valid. Moreover, the courts have never had any difficulty with bequests for the conversion to Christianity of the "heathen" in foreign parts. Indeed, the question whether any outrage to the feelings of these benighted peoples was intended has not even been given judicial consideration.[21]

In the famous case of Vidal v. Philadelphia,[22] the testator bequeathed $2,000,000 to found a college, and provided that no "ecclesiastic, missionary, or minister of any sect whatsoever shall ever hold or exercise any station or duty whatever in the said college; nor shall any such person ever be admitted for any purpose, or as a visitor, within the premises appropriated to the purposes of the said college." Daniel Webster made a vigorous argument against the validity of these provisions, contending that the plan of education was derogatory to the Christian religion, tending to weaken men's respect for it and their conviction of its importance. In a burst of eloquence he concluded by saying: "The plan is unblessed in design and unwise in purpose. If the court should set it aside, and I be instrumental in contributing to that result, it will be the crowning mercy of my professional life." But the court had no difficulty in upholding the provisions of the will.

In the attitude of the state toward unorthodox religions there are three stages of progress. First, the state may attempt to compel conformity to the orthodox religion. All such attempts have long since ceased both in England and in this country. Secondly, the state may impose silence upon the unorthodox. It may punish attacks upon the orthodox religion. We have now advanced to the stage where an attack even upon the fundamental doctrines of the prevailing religion is not punishable unless it is made in such an offensive manner as to make it a public nuisance. Thirdly, the state may refuse to uphold as charitable a disposition of property intended to promote a religion which is fundamentally opposed to the orthodox religion. We have not yet definitely arrived at the stage where such dispositions are held to be charitable; but perhaps the courts are ready to take this position. This position has been reached in regard to trusts for other than religious purposes, as in the case of the promotion of vegetarianism,[23] and the suppression of vivisection.[24] Similarly it is submitted that if a belief is one which rational persons may and do hold, and if the result of the promotion of the belief, if founded on truth, would be or might rationally be thought to be beneficial to mankind, the promotion of such a belief is a charitable object, no matter how it may differ from the beliefs entertained by the judges or by the majority of the community.

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[17] 31 Beav. 14, 54 Eng. Reprint, 1042, 31 L. J. Ch. N. S. 767, 8 Jur. N. S. 663, 6 L. T. N. S. 525, 10 Week. Rep. 642.

[18] Chase v. Dickey, 212 Mass. 555, 99 N. E. 410; Glover v. Baker, 76 N. H. 393, 83 Atl. 916.

[19] Jones v. Watford, 62 N. J. Eq. 339, 50 Atl. 180, affirmed in 64 N. J. Eq. 785, 53 Atl. 397.

[20] Vineland Trust Co. v. Westendorf, — N. J. Eq. —, 98 Atl. 314.

[21] In Habershon v. Vardon, 4 De G. & S. 467, 64 Eng. Reprint, 916, 20 L. J. Ch. N. S. 549, 15 Jur. 961, a trust for the restoration of the Jews to Jerusalem was held illegal as tending to cause a political revolution in a friendly country.

[22] 2 How. 127, 11 L. ed. 205.

[23] Re Cranston [1898] 1 Ir. R. 431.

[24] Re Foveaux [1895] 2 Ch. 501.

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JOAN OF ARC—Bastien-Lepage

Mr. Lepage has represented his Joan of Arc as a true shepherdess of Lorraine. In the background he has painted the white walls and the red roof of the cottage at Domremy.

The Four Trials of Joan of Arc

BY HON. WILLIAM N. GEMMILL

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HISTORY has recorded no blacker tragedy than the trial and execution of Joan of Arc.

So noble was her life, so glorious her achievements, that her death amid the flames instantly placed the crown of the immortals upon her brow.

The ashes of her funeral pyre had not grown cold before all the world wondered whether a beautiful maid from the marshes of Lorraine had really been among them, or whether an angel had for a brief time fluttered its wings over the earth, then vanished into the sky, from whence it came.

As we look back through five centuries, we can now see that, in its truest sense, Joan of Arc was never tried, but that England and France, with all their greed, their hate, their superstition, their intolerance, and their tyranny, were tried, and when the flames leaped up about the feet of Joan, a judgment was

WHERE JOAN OF ARC DIED AT THE STAKE
Market Place, Rouen, France

pronounced against them all, which gained for civilization a hundred years of progress.

England and France had been at war for eighty years when Joan was born.

Two Kings of France had been carried captives to the tower of London, and unhappy France was never in greater extremity. Charles VI., her King, was insane, and would not die. His wife, Isabella of Bavaria, was a harlot and a traitor. She conspired with Edward III. of England to place the Crown of France upon his head. She publicly declared her son Charles a bastard, and therefore ineligible to the throne of France. She welcomed the English army to Paris. She looted the treasury of the Empire. She encouraged roving bands of robbers to stalk through the land, leaving behind ruin and desolation. Everywhere private property was confiscated, and thousands of innocent men and women were put to the sword.

In the little village of Domremy, the birthplace of Joan, even the churches were desecrated, and the holy images carried away.

It was here, upon the bank of the river Meuse, that there grew a great, wide-spreading beech tree. It was called the "Beautiful May." Beneath its shading boughs, cool fountains of healing waters bubbled forth. Here the children of the village played and danced and sang, and here, too, it was said, elf ladies came and joined the merrymakers, and when they had gone ghosts and goblins and fairies joined hands and circled 'bout the tree and sported in the fountains, until the morning dawned.

Joan was just thirteen, when one day under the "Beautiful May" she heard the voices of three angels, and saw them as they knelt about her. They were Saint Michael, Saint Katharine, and Saint Margaret.

The voices said that the Kingdom which had been lost by a woman should be regained by a pure maiden, and that this maiden would come from the marshes of Lorraine.

Joan knew instantly that the woman was Queen Isabella, and she wondered if she might be the maid. Her wonder was not long. For one day, under the great tree, the voices spoke with an emphasis that could not be misunderstood, and said to her: "Thou art the maid."

Her purpose was fixed. She would drive back the English invader, who with the Burgundians had seized Paris, and with a conquering army had marched southward, laying waste the whole of France.

Among the large cities, Orleans only was left unconquered. This was a city of 50,000 inhabitants, and an English and French army of 20,000 soldiers was encamped about its walls.

Charles, the bastard son of Isabella, was the last hope of France. He had been crowned King Charles VII. by his remaining followers. He was weak, dissolute, and cowardly.

At the approach of the English he fled to Chinon.

Joan determined to go to the rescue of Orleans, then lead the King to Reims, where he should be crowned in a manner befitting a King of France.

One night, when but sixteen years of age, she slipped away from her home, and sought the governor of the province at Vancouleurs. He led her to the King at Chinon.

Charles was gracious, but timid. His cause was desperate, yet it would be more desperate if he put his trust in a woman "possessed of the Devil."

She must be tried and proved, so Joan entered upon her first trial.

Charles' Parliament was assembled at Poitiers. Thither Joan was conducted to be examined by the most distinguished doctors of divinity and scientists who could then be summoned. Chief among these were Jean Lombard, professor of divinity in the University of Paris, and Pierre Turelure, grand inquisitor of Toulouse.

This trial lasted for three weeks. A session of three hours was held each day, during which Joan underwent the most searching inquiry. She was asked about the voices she had heard and the visions she had seen.

Her whole life at Domremy was revealed.

One skeptic asked, why, if God was with her, she needed an army to drive

out the English. Her reply was that God fought only with brave men, when they fought for their country.

They asked her for a sign like that given by God to Hezekiah and Gideon. She replied: "I will give you a sign at Orleans."

All the evidence taken was written down by notaries, and when the trial was completed the whole was laid before Parliament.

After considering it for several days, a Parliamentary decree was entered, declaring that nothing evil was found in the maid, but on the contrary she was a good Christian and a good Catholic.

The King was thereupon advised that: "Considering the imminent necessity and peril of Orleans, he might lawfully avail himself of her services."

When the decree was carried to the King, he still hesitated. He was superstitious. There was a belief prevalent that an enemy could have no power over a pure maiden.

The King must know before accepting her services, that she was pure.

To determine this question a jury of distinguished women was called. Two Queens were members of it, Queen Yolanda of Sicily, and Queen Marie of Anjou. Day after day Joan was questioned by these women. They produced an old record from the Magistrate's Court at Toul, which showed that Joan had once been summoned to the court by a young man from Lorraine, who charged that she had broken an engagement to marry him. Joan's explanation was that she had never promised to marry him, but that her father had made the promise on her behalf.

At last the woman's jury reported to the King that Joan was a pure maiden, and worthy of all trust.

At once an armor was prepared and fitted to Joan's tall but slender form, and the march to Orleans began.

When they reached Boulis, a few miles from Orleans, Joan dictated a letter to the enemy. It was in part as follows:

"King of England and you Duke of Burgundy, surrender to the Maid, sent hither by God, the keys of the good cities you have taken and violated in France, for I have come to restore the blood Royal."

Fifteen thousand English and French soldiers had been for weeks building towers and ramparts on three sides of the city.

Joan entered the city on the 29th of April, 1429. She had under her command, within the city, about 4,000 troops. To these she gave an immediate command to charge the enemy. The battle raged for twelve days. Joan was everywhere in the midst of the fighting.

On May 10th the enemy began a precipitous flight toward Paris. Victory was complete, and Joan hurried to Chinon to lead the King to Reims, where he was crowned on July 17, 1429.

Her mission was now accomplished, but she was persuaded to pursue the enemy to the gates of Paris. Here her armies were defeated and fell back, and on the 23d of May, 1430, she was surrounded and captured.

Three days later the University of Paris wrote to the King of England and France, demanding that Joan be immediately surrendered to the church for trial, on the charge of idolatries, heresies, and witchcraft.

The English were not eager to deliver their famous captive to anyone. They had planned to inclose her in a sack and drown her in the Seine.

Just at this time, John of Luxembourg, a vassal of the Duke of Burgundy, claimed the right to possess the prisoner because she had been captured in his territory. After long negotiations the English paid John 10,000 livres for his prisoner.

Immediately thereafter the University of Paris wrote to the King of England:

"We have learned that the maid has now been put into your power, and we trust that she will be speedily brought to trial to repair the great iniquities and scandals that have come to this Kingdom through her means."

On the 3d of January, 1431, the Council, sitting in Paris, granted an act making over the maid to Pierre Cauchon, Bishop of Beauvais, for trial. It was stipulated that if she was acquitted by the church, she should be turned back to the English.

There were three jurisdictions in which she might be tried: The ecclesiastical, the Inquisition, and the civil courts.

The University wanted her tried by the Inquisition, but both the grand inquisitor and the vicar at Rouen refused to act.

The University then appealed to the Pope, urging that Pierre Cauchon be appointed archbishop of Rouen. This request was refused. Cauchon had recently been dismissed from his diocese because of scandalous conduct, and at this time he neither had territory nor clergy of his own.

A special decree was issued by the King, appointing Cauchon to conduct the trial at Rouen, and the Cathedral at Rouen granted him letters to act as ecclesiastical judge in that diocese.

The bishop immediately proceeded to organize the court.

Under the rules of the Inquisition the presiding judge might call to his aid as many others as he chose, and confer on them full power to act as judges. The bishop thereupon selected forty-two of the most eminent scholars and ecclesiastics in France to act as judges. Fifteen of them were doctors of divinity, ten of them from the University of Paris. Four were doctors of canon law, four doctors of medicine, seven bachelors of divinity, three bachelors of canon law. The other nine were assessors.

Under the rules it was necessary that some representative of the Inquisition participate in the trial. Jean Lemaitre, vicar at Rouen, was summoned, but he refused to act with Cauchon. He was later ordered by the grand inquisitor to proceed to Rouen and sit as an assessor.

There were three methods of presenting an accused for trial before the Inquisition,—by accusation, denunciation, and inquiry.

Under the first, it was necessary for someone, in person, to accuse another before a representative of the Inquisition. Under such circumstances the accuser was required to furnish sufficient evidence to convict the one accused. If he failed, he might himself be prosecuted before the same tribunal, on the charge of making a false accusation.

Under the second method, one who knew of an offense having been committed went before an officer of the Inquisition and formally denounced the offender. He was required to furnish some evidence of guilt, but was not held responsible, if the accused was not convicted.

By the third plan, the entire proceeding was instituted and carried on by officials of the Inquisition.

It was this latter method that was adopted in the trial of Joan of Arc.

For a long time many rumors were afloat concerning the strange beliefs and conduct of Joan. It was said that from childhood she had practised sorcery and witchcraft, and that she always carried concealed in her bosom the Mandragora, through which she exercised a demoniacal influence over all with whom she came in contact.

In order to formulate definite charges against her, a large number of spies were sent to her childhood home, and wherever else she had been, and almost every act of hers, however innocent in its character, was tortured into some evidence of guilt.

On January 9, 1431, the trial began in the chapel of Rouen Castle. The first assembling of the judges was for the purpose of formulating the charges. Less than one half the judges had arrived to participate in the opening session, and the trial was continued from day to day until February 21st. On this day most of the judges were present, and Joan was conducted in chains before the bar. She had now been imprisoned in the tower for five months. Nearly all of this time she was held bound in chains. When she stood before her judges, the chains were removed.

She was first addressed by Cauchon, who commanded that she take the oath "to tell the truth, the whole truth, and nothing but the truth." She refused to be sworn, saying that she would tell the truth, but not the whole truth, because there were some things she would tell only to God.

She was then severely questioned, nearly all of the judges participating from time to time. They asked concerning every incident of her life, the voices

she had heard, the visions she had seen, and of her strange adventures.

For six days in succession this inquisition continued.

At the end of this time Joan was completely exhausted, and much sympathy was manifested for her by the public and by several of her judges. One of these, Jean Lochier, a distinguished lawyer, denounced the methods of the court, and refused to continue as a judge. Eighteen other judges followed his example, and left the court. Their places were speedily filled by others more pliable to the will of Cauchon.

For several days thereafter, several of the most aggressive judges continued their examination of Joan inside the prison. After that two judges and six counselors from Paris met daily at the bishop's house to formulate the charges. Up to this time the whole examination of the prisoner was for the purpose of leading her to make admissions from which definite charges could be formulated.

Seventy definite articles of accusation were prepared, each one containing a specific charge.

On the 27th of March, the judges all assembled, and Joan was brought into court. She was required to stand and make formal answer to each accusation, as it was read to her by the judges. She pleaded to be allowed counsel to advise her, before making answer. This request was denied. It took two full days to read the charges and receive her answers thereto.

Immediately thereafter the judges voted that her answers were unsatisfactory.

During the entire trial not a single witness appeared in person before the court. All the evidence was produced in the form of affidavits, and these were always written in the third person, the object being to completely conceal from the accused both the name and identity of the witness. This was according to the Code of the Inquisition.

After the answers to the seventy articles of accusation were rejected, all the charges were combined into twelve Latin articles, and these, together with Joan's answers thereto, were forwarded to the University of Paris. They were accompanied by a written request from the court that an expert opinion be given by the University, touching the sufficiency of the answers, and the guilt or innocence of the accused.

The principal charges contained in the twelve articles were, that Joan had refused submission to the church; that she had consorted with fairies and evil spirits; that the "Beautiful May" tree and the fountains about Domremy were the haunts of evil spirits; that Joan had alone at night hung garlands upon this tree; that she left her home without the consent of her parents; that she refused to marry a man to whom she was engaged; that she wore masculine attire; that she refused to take the oath; and that she concealed in her bosom the Mandragora.

The reply of the University of Paris was received by the court in Rouen on May 19th. The court at once reassembled and the expert opinion of the University was publicly read. The opinion was, in all respects, adverse to Joan. The court was urged to make haste and punish the woman who had so scandalized the church.

Each judge was then required to rise, when his name was called, and vote specifically upon the question of the guilt or innocence of the accused.

All voted guilty, but the majority wished to give the maid an opportunity for repentance. Some wanted her confined in prison until she became of age.

For the purpose of receiving her abjuration, two scaffolds were erected in the center of the graveyard of St. Ouen. The scaffolds faced each other, and were but a few feet apart.

Joan was seated upon one of these, while her judges mounted the other, and a clamorous multitude surrounded the scene. With the maid was Erand, a noted preacher, whose duty it was to preach the final sermon to the now frightened and quivering prisoner, in such a way that her stubborn soul would be led to repentance.

The preacher's text was: "A branch cannot bear fruit, except it abide in the vine." For more than an hour this hypocrite, cloaked in the garb of a minister

of God, denounced this sixteen-year old girl as a "child of the Devil," and called upon her to immediately sign articles of abjuration, which had previously been prepared.

Joan tremblingly begged for mercy. She asked to be taken before the Pope, and declared that she would tell him all. This was denied her. The preacher shouted: "Sign now or be burned today."

Half fainting, the exhausted girl muttered: "Better sign than burn." She could not write her name. The preacher grabbed her hand, which held the pen, and hastily executed the cross.

Immediately thereafter she was removed to her former prison, and, in the presence of many of her judges, was stripped of all her male attire, and was required to clothe herself in female garments.

As night approached Joan, utterly exhausted, fell asleep. When morning came she discovered that her female garments had been removed and in their place was the masculine attire she had discarded the day before. In this she was soon arrayed, unconscious of the fact that a trap had been deliberately laid and that she was its victim.

The spies on guard soon reported what their eyes had witnessed.

The judges were immediately summoned. Only twenty-one of the original forty-two assembled. The vacancies were filled by Cauchon from among the distinguished men who had already gathered to witness the burning of a heretic. The bishop addressed the court. There was no longer any doubt that the prisoner was in partnership with the Devil.

Each judge was required to vote separately, and all voted for her immediate death. The only point of disagreement was whether her body should be mutilated before her spirit had flown.

The bishop ordered that the sentence should be executed the next morning at 8 o'clock.

Very early on the morning of May 30, 1431, two scaffolds were erected in the old market place at Rouen. At 9 o'clock the procession started. Joan rode in a cart drawn by four splendid horses. Six hundred soldiers acted as her escort. A mob of 10,000 fickle wretches followed, crying: "Witch, heretic, apostate!" All the judges, civil magistrates, and doctors of divinity mounted one scaffold. Upon the other was Joan.

The judges had decreed that, before she should be given to the flames, she must undergo the torture of another sermon, not that she might now repent, for she was beyond the pale, but that her soul might not linger forever in hell.

The preacher was Doctor Nicoli Midi, a shining light of the University of Paris. His text was: "If one member suffers, all the members suffer with it."

For half an hour he wrung the soul of the girl, until she cried with bitterest agony. Some of the judges who had come to gloat, fell upon their knees and wept. Others slunk away in the crowd.

The sermon done, Joan was seized by three soldiers and carried to the top of a huge pile of wood, where she was bound to a stake. No civil judgment of death had been rendered, as the law required. The executioners, without legal order, applied the torch and the flames leaped forth.

Some of the spectators said they saw the word "Redeemer" through the fierce furnace blast. Others said they saw three angels in the flame, and still others saw a white dove hovering just above an upturned face.

A few of the judges who had not fled met and decreed that the ashes of the heretic should be thrown into the Seine. Before this could be done the winds not only scattered the ashes, but carried to the remotest parts of France a conviction that the foulest crime had been committed against an innocent girl.

Two years had not elapsed before all the judges, except Cauchon, were in hiding. He brazenly defied public sentiment until the last.

The city of Orleans voted a pension to the mother of Joan, and a monument was erected to the maid in the public square of Rouen, where the stake had been.

The Duke of Bedford, at the head of the English army, became a fugitive, and the whole army was hastily withdrawn across the channel.

France once more became united, and Charles VII. was her King.

Joan's father died of a broken heart. Her oldest brother fell fighting for his King. Her aged mother alone was left to see that time should vindicate the real character of her "Little Girl," as she called her.

She first pleaded with the Roman Cardinal at Rouen. He treated her kindly, and offered to accompany her to the Pope at Rome. She gladly accepted the offer, and was soon after received by Pope Calixtus III., who listened to her story with great sympathy and immediately addressed a letter to the Archbishop of Reims and the Grand Inquisitor of France, appointing them commissioners and directing that they, without delay, summon a solemn public audience in the great Episcopal Palace of Paris, where public announcement should be made of a Papal decree, granting a rehearing of the case against Joan of Arc.

This assemblage met November 17, 1455. It was a magnificent affair, attended by nearly all the most distinguished dignitaries of France. In the midst of these the mother of Joan was seated. As soon as the decree was announced, the commissioners issued citations to all the judges and assessors who had participated in the great trial. Several of the judges had died in the twenty-four years that had elapsed, among these being Pierre Cauchon and Jean Lemaitre. Citations were issued to all the heirs of the judges who had died, commanding them to appear on the 12th of December, 1455, and defend the memory of their dead. These citations were nailed upon all the doors of all the churches in Paris, Reims, and Rouen.

When the new court met in December many of the old judges were present. The heirs of the dead judges sent word that they did not care to defend the memories of their ancestors. All the witnesses whose testimony had been given in the former trial, and who were still alive, were summoned. During the entire trial, which lasted many weeks, not a person examined attempted to defend either the procedure or the judgment of the former court. Most of the old judges laid the blame at the door of Cauchon.

When the trial ended a decree was proclaimed and ordered published in every church in France. Some of its specific findings were:

First: The Bishop of Beauvais had no right to preside at the trial.

Second: Joan was a minor, and could not be tried without a guardian having been appointed for her.

Third: Joan, never having lived in Rouen, could not be tried in that diocese.

Fourth: The court cruelly betrayed and ensnared her into making admissions of criminal conduct.

Fifth: She was pure, gentle, and pious.

Sixth: The voices taught her nothing but good.

Seventh: She wore men's dress to obey a Divine command.

The decree closed with these words: "Finally, in every city of the Kingdom, and in every humble locality, this judgment shall be publicly made known, to be kept in remembrance by all men for all times."

William N. Grunmill

The Legal Clinic

BY PROFESSOR JOHN H. WIGMORE

Vice President of the Chicago Legal Aid Society

AND why not a legal clinic as well as a medical and surgical clinic? What does a clinic do? It combines two things, education and charity; and it combines them effectively, without loss to either. And it doubles the possibilities for both; *i. e.*, it does for education and for charity also an indispensable service that could not otherwise have been performed.

Medical education is now far ahead of legal education. Formerly the young medical student got his clinical experience by driving the doctor about to his patients, and joining him in his bedside inspection,—sometimes by holding his horse outside at the curbstone while the doctor went alone into the patient's house. Nowadays the medical student gets his clinical experience by attending a real case, brought into the amphitheater where a skilled specialist demonstrates to the student group the lessons of the case.

Formerly the law student got his clinical experience in the same way as the antique doctor. He sat at a table in the outer office; and when the client came in, the embryo lawyer said, "Mr. Counselor is engaged; please wait." Then, half an hour later, when the client emerged from the consulting room, the counselor handed a paper to the young law graduate with the order, "Take this over to the probate court and file it." Once in a while the eminent counselor, by way of varying the monotony, gave the young law graduate a small piece of silver, with the order, "Go over to Joe's place, and get me a packet of Cairo cigarettes, usual brand." Gradually, the young law graduate thus gathered a few useful clinical hints.

Nowadays,—but what are we saying? Nowadays things are still as they were formerly. The "formerly" of medical practice continues to be the way of law practice. The great achievement of medical education—the hospital clinic—is still practically unknown in legal education.

It is on the verge of arriving, however, and it is as sure to arrive soon, and on a large scale, as every great and inherently true thing is sure to come to pass.

It will come to pass as it did in medical education. The medical schools affiliated with the hospitals, and the professors became the demonstrators in the hospital clinics. So, too, the law schools will affiliate with the legal aid societies, and will turn them into legal clinics. The legal aid societies are here. It remains only to provide the method of affiliation.

Two methods thus far obtain, but both are imperfect. One is the method of allowing law-school students to volunteer for a small part of their time in the legal aid work, while still undergraduates. The fault of this method is that the student in his first or second or third year is not mature enough to profit by what he does and sees.

The other method is to appoint a law graduate to a position on the legal aid staff, upon his graduation. The faults of this method are two. In the first place, there is no systematic supervision by a professor of practice; hence the educational benefit is relatively small and casual; and there is the same waste of duplicated and unguided effort as in a law office. In the second place, there is no stipend to enable the legal aid hospital to secure the services of all of the best graduates: for the salaries of the pros-

perous law offices compete for the graduates, and naturally most of the young men must accept these salaried places.

There is only one sound method, the method of the future, and it is this,—for each legal aid clinic there will be from ten to fifty positions (according to the size of the community), each having a stipend of the amount usually paid in local law offices. These positions will be filled by competitive appointments. The funds will be supplied either by private endowment of the society, or by university endowment, or by bar association contributions.

A professor of practice will be in charge of these young attorneys; and at his call will be a staff of specialists for special classes of litigation. The professor of practice will so conduct the work as to give it the maximum educational value.

Moreover, as the four-year law course comes gradually into vogue (Northwestern University has already prescribed it; California, Yale, and others, are due to follow; Manila prescribed it two years ago), this clinical service will be required as a part of the fourth year's work for a degree. The young man thus equipped will be ready for setting up his own law office on graduation, just as the young medical graduate now does. For in the six months of supervised clinical experience he will have received all of the benefit that now comes from a year or two in the ordinary office. And he will have received much more, too; for he will have come into direct daily contact with the client,—a vital benefit which he seldom or never gets in the usual law office.

A dream, do you say? Not at all. It is precisely the plan which has already been devised and approved by the Chicago Bar Association, nearly two years ago, and now awaits only the raising of the necessary funds. It is precisely the plan approved by the New York Bar Association's Committee on Legal Education. The chairman of that committee, W. V. Rowe, Esq., has eloquently set forth the plan in the "Illinois Law Review" for April, 1917; and will urge it zealously throughout the country. It is feasible in every large city, and it is feasible in every university town where there is a law school. If the town is too small to supply either a medical or a legal hospital with sufficient variety of cases, then (as in the case of medical schools) this part of the law-school work can be carried on in the nearest metropolis.

The objection, by the way, that the range of cases in legal aid work is not sufficiently varied, has sometimes been raised by members of the bar, even in large cities. But a full acquaintance with the work of an active legal aid society would dispel the objection. The variety of cases is certainly far greater than in any single law office. Do you know that the largest law office in the United States is the Legal Aid Society of New York with nearly 40,000 new cases annually? Do you know that the next largest law office is the Legal Aid Society of Chicago, with 12,000 new cases annually? The number used to reach 16,000, but lack of funds obliged us to close the doors at noon so as to reduce mechanically the number of cases to be handled. Here is a list of the kinds of cases arising in one year's work: Wage claims; miscellaneous claims for collection; support matters; claims for collection of alimony; chattel mortgages; wage assignments; complaints growing out of domestic relations; cases in which clients were advised as to their legal rights; matters between attorney and client; matters between landlord and tenant; cases of advice and help on claims; cases of recovery of personal property; real estate matters; contract matters; sundry matters; insurance matters; probate, wills, estate, etc.; complaints against employment agencies; cases of insanity; cases involving custody of children; complaints against pawn shops; foreign matters; cases of crime against women and children; bastardy and rape; miscellaneous criminal matters; miscellaneous matters.

The litigation arising out of these cases ran into every court in the county, and involved the use of practically every variety of legal document. In more than one case, the society's attorneys helped

to make law both in the supreme court and in the legislature's sessions.

The following selection of cases, made at random from recent annals of the society's work, will illustrate for the skeptical the value of the legal clinic as a finishing feature in the training of a responsible lawyer:

File No. 2424.12. Mr. H. was sued by the X Business College for "family expenses and necessaries" to the sum of $23.75, being a balance alleged to be due for schooling furnished Mr. H.'s daughter, Ida, a minor. The facts were that a solicitor of the business college had called on Ida and had represented that a course in shorthand would cost $50; that most students finished in six months; and that as much time could be taken by the student as was necessary to finish, without extra charge. Ida's brother signed an enrolment slip for a "six months' shorthand course," promising to pay therefor $50. Mr. H. was not present during the conversation, and did not know about the arrangement until two weeks after Ida had started the course. Mr. H. was a poor man, making about $15 per week. He could not afford to send Ida to business college, but permitted her to attend because her brother was paying for it. Ida failed in some of her tests, so the business college informed her, and she was obliged to go two months more, for which the charge was $20 extra, plus $3.75 for stationery. During the seventh and eighth months Ida worked in the business college office, writing letters and mailing bills. Many of these bills were for extra tuition in cases similar to hers. Many complaints were registered by parents who refused to pay these bills. It appeared to us that the college was working a scheme to extort money from parents, and we opposed it. The court held that the schooling was furnished under an express contract with Ida's brother for a fixed amount, which had been paid; that the father could in no event be held for necessaries for her, had had nothing to do with the matter, and, furthermore, his income and station in life negative the theory that a business college education was, as to his daughter, a necessity. The business college then paid Mr. H. $10 for witness fees and mileage taxed as costs, and gave to Ida her diploma, which had been withheld.

File No. 2406.14. Harold C. had borrowed in various sums from a loan company a total amount of $90. In that same year he had repaid on the claim $82.50. The loan company from which he had borrowed then went out of business and sold out to another company. This latter company in turn sold out to a third company, who this year took up the claim against Harold C., doubtless thinking that he had destroyed his receipts for the money paid. The loan company claimed that $105 was still due, and upon refusal of Harold C. to pay they sued him for this amount. He then came to us. We found that with the balance due on the original loan and the interest thereon, the sum due was $18.65. When the attorney for the loan company learned that we would contest the suit, he agreed to have the case dismissed, and, upon payment of $21.65 by our client, the matter was settled and we recovered his papers for him.

File No. A9764.1. Fred C. came to the office with a vague statement about some money—the amount not known—that was due him from a Eastern railroad for which he had worked as a switchman in the year 1905. He claimed to have quit his work with the railroad before the regular pay day, and gone to Kentucky. From there he had written for the amount due him, but had been informed that he would have to present himself personally to the paymaster in New York before the money would be paid. As he was unable to go to New York, Fred C. let the matter drop for the time being. Three years later he again wrote for his money, and again received a letter stating that he must apply for it personally. At the time he came to us he had this letter, which bore the date of March 2, 1908. He had been in the Army from the time he received that leter up to a short time before he came to us, and had never gone back to New York. We took the matter up with the railroad, an investigation was made, and the sum of $23.60 was found to be due our client. This amount was forwarded to us immediate-

ly, and almost nine years from the date he had earned the money the same was turned over by us to Fred C.

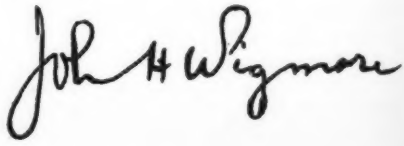
File No. 190.34. Man, having wife and two children, aged six and eight years, was indicted for embezzlement. He was suffering from tuberculosis, and when he was arrested, his wife, also suffering with tuberculosis, was sent to a sanitarium, and the two children were sent to the Home for the Friendless. Upon close inquiry we found that the wife had been very ill, that the man had become discouraged and had begun to drink, which he had done twice before in his life, and, being in a position where he handled funds, he could easily take same without detection. The temptation under the circumstances was too great, and when he was arrested he had no idea how much money he had taken. It appeared that he had taken considerable, but the circumstances under which he had committed the offense and his family's condition were such that we could see no good to be gained if he were sent to the penitentiary. It was the first time that he had been arrested, and he fully realized what he had done. Arrangements were made with the man who had secured the position for him and gone on his bond to give him work and to have the loss repaid, and we therefore appealed to the court, who gave him a very light sentence. He is now repaying the debt, and has his family with him again.

File No. 92.25. She was a little dark-eyed German lady, and so excited when she came into the office that all she could say was, "My boy Erick, you must get him for me." Her tale was a most pathetic one. Her husband had deserted her and left her penniless and almost starving in Battle Creek, Michigan. In this hour of her extremity she had placed the little boy with people whom she had supposed to be friends, and had come on to Chicago, where she could get work. Every few months she had visited her boy and each time had been treated more and more coldly. Finally, having made a place for herself here and feeling that she could now obtain the object of all her struggles, she sent for her boy. She was answered with a legal notice, telling her that her son had become a ward of the state of Michigan and had been given out for adoption to the people with whom she had left him.

It was at this time that she turned to the office of the Legal Aid Society. After a long and bitter struggle, lasting about two years, a habeas corpus proceeding was finally terminated successfully and the boy was restored to his mother.

File No. 8284.1. Our client in this case was employed by a building contractor, who was utterly irresponsible financially, and did carpenter work upon two new flat buildings, the owners of which were unacquainted with the mechanic's lien law and took no precautions to protect themselves against liens. We instituted suit against both owners in accordance with the statute and obtained a judgment for $28 against one and $12.50 against the other, both of which were paid in full, with costs. By this means we not only obtained the wages that our client was justly entitled to, but also taught the owners a valuable though costly lesson.

File No. 218.29. The defendant in this case was arrested on a warrant charging him with being the father of the illegitimate child of our client, and, upon his being found guilty, was committed to the Bridewell for six months in default of furnishing satisfactory security for the payment of money for the support of the child, as required by the statute relating to bastardy. Upon the expiration of his sentence we instituted suit upon the order for the payment of money, which was entered in the quasi criminal proceedings, and after judgment, followed by garnishment proceedings, we succeeded at last in demonstrating to the man that he could legally be compelled to support the child, and he has for the last twenty months been paying to our client through this office regularly the sum of $1 per week.



The Lawyers' Attitude Toward Social Justice

BY HON. MILTON STRASBURGER

Judge of the Municipal Court of the District of Columbia

DESPITE the well-directed efforts of a large class of persons interested in social welfare, the stream of poverty, with its tributary—crime, continues on its tortuous course, as though it were ordained that "life should be a burden to the many and a pleasure to the few." Natural resources almost beyond the dream of man, and national wealth of unprecedented volume, seem not materially to arrest its progress.

Bread riots are not needed to remind us that a comparatively large section of our fellow men are on the border line of poverty; and we need no highly sensitized seismograph to record the wave of unrest sweeping throughout the world. The S. O. S. signal goes forth, but we are in need of a coherer so attuned as to bring an end to human suffering. The subject has been often discussed, but will not be closed until complete relief is found.

Investigators have arrived at scientific conclusions respecting the source of poverty, and have entirely discarded the theory that the poor are alone responsible for their unfortunate condition. From a political aspect only are men born equal; here the equality ends. Heredity, environment, education, and social institutions are powerful factors in the development of men, and contribute in no small degree to poverty and crime.

Possibly some of the conclusions of our sociologists may be of more than passing interest and importance to the members of the legal profession, for we may find that our indifference and inattention to social problems may have a certain "causal connection" with the resultant wrongs and misery.

Says Professor E. T. Devine, whose qualifications as a diagnostician of social ills are universally recognized:

> I hold that personal depravity is as foreign to any theory of the hardships of our modern poor as witchcraft or demoniacal possession; that these hardships are economic, social, transitional, measurable, manageable. Misery, as we say of tuberculosis, is communicable, curable, and preventable. It lies not in the unalterable nature of things, but in our *peculiar human institutions, our social arrangements,* our tenements and streets and subways, *our laws and courts and jails,* our education, our philanthropy, our politics, our industry, and our business.

I have italicised those portions of the statement which I deem especially important to the lawyer, for it will not be denied that our profession is responsible, in part at least, for our institutions, our laws, and our courts.

We may derive some comfort from the fact that the indictment is sufficiently broad to include educators, philanthropists, politicians, and business men, and we may be surprised and pleased to find ourselves in such good company; nevertheless we are charged in an indictment to which we shall find some difficulty in pleading. While it is admitted that our political institutions are most in accord with modern ideals—so much so that the people of certain European countries are now threatening to model theirs along the same lines,—the same is not true of our laws and our courts.

The subject of poverty is not a pleasant one to contemplate, even though the consideration thereof may contribute to its relief; but it is the more unpleasant when we are reminded by one author that our

"laws and courts" are partly responsible for poverty, and by another that there are "deep wrongs in the present constitution of society which it is within our power to amend." The subject, however, becomes of increasing importance when we are assured that economic conditions are responsible for crime.

To quote from a recent author:

> Any adequate study of the phenomena of crime and of the criminal must take into account the economic facts,—must consider the subject matter of the study from the economic standpoint; for while few will follow the socialist theorist in the controlling importance they assign to the economic factors of social life, it is nevertheless manifest that these factors are powerful elements in the totality of social conditions, and must be given due consideration in the survey of all social phenomena, including that of crime.

To state the proposition more conclusively, in the language of another author:

> The part played by economic conditions in criminality is preponderating, even decisive. Since crime is the consequence of economic conditions, we can combat it by changing these conditions, and humanity may look forward to the possibility of some day delivering itself from one of its most terrible scourges.

The business man, though unwittingly contributing to the cause, may, in his daily affairs, see but little evidence of poverty and crime, and may escape consideration of such unpleasant subjects; but we lawyers cannot escape if we would, for our experience in the criminal and inferior courts brings us into daily contact with the submerged classes, and appealing invitations to alleviate conditions are constantly made to us.

May it not, therefore, be the duty of the lawyer to contribute to the solution of the practical problems arising out of our complicated economic conditions,—for which our laws and our courts are partly responsible; or may these problems be safely relegated to the economist, the politician, the labor union,—and possibly the socialist? Is there any adequate reason why our profession should not aid in the development of a healthy public sentiment, and thereby contribute to the enactment of progressive and remedial legislation?

In recent years there have been enacted some very important laws, both Federal and state, to improve social and economic conditions, but it does not appear that the lawyers, as a class, have championed, much less proposed, these laws, though I doubt not that individual lawyers, in common with others, to a limited extent have contributed to the creation of public sentiment in their favor. Take, for example, the child labor laws, workingmen's compensation and safety appliance acts, eight-hour laws, compensation for injuries' act, and others designed to improve our economic conditions,—the authors of all of which are well known,—can it be said that our bar associations have fostered them or in any way contributed to their enactment? What attention, if any, are the lawyers at present devoting to the consideration of the "health insurance" laws,—the latest of social reforms submitted to the people for consideration and approval? In truth, have we as lawyers, or have our associations, in modern times, seriously engaged in any altruistic undertakings, or are they beyond our province?

Undoubtedly, some of the bar associations of the larger cities have brought about improvement in legal education and certain reforms in procedure and practice, etc.; but have the contributions of these organizations to the *relief of social conditions* been as great as the situation demands,—assuming that we are responsible, in part, for such conditions?

Our attention has been called by a prominent member of the profession to the futility of our grand jury system, the need for which seems to have been outgrown. We are assured that the ancient office of "coroner" does not effectually meet the needs and demands of modern society. Time and again we are reminded that our system of conducting criminal trials (particularly those involving the determination of the mental condition of accused) does not compare favorably with the systems in vogue in other enlightened countries. We are shocked when told by a prominent educator "that this country spends annually $500,000,000 more on fighting the existing crime than on all its works of charity, education, and religion." Yet we make but little, if any,

effort to improve or change such conditions.

More than a century ago an American jurist pointed out the injustice and temptation to perjury arising from the right to try a second time matters of fact, particularly with respect to petty controversies where trial *de novo* is granted as matter of right; yet this method prevails in many, if not most, jurisdictions, notwithstanding the hardship admittedly arising therefrom to a class of persons least able to submit to the same.

Laws are not wanting to cause the prompt eviction of tenants who, because of fortuitous circumstances, fail to pay their rent in advance, and the sheriff is empowered by statute to place the household effects of the tenant in storage, in the event of the latter's failure to promptly remove them from the thoroughfare—all very essential laws; but what consideration, under such circumstances, is paid to the welfare of the unfortunate tenant and his family, and what shelter is afforded them, unless it be the workhouse? The human derelict finds no place in our economic system, and therefore the law pays but slight attention to his needs. I have heard it stated by one of the judges of the municipal court of a large city that he and his associates frequently are obliged to draw upon their own limited means to provide relief for poor tenants against whom they have entered judgments of eviction, for even organized charity affords no prompt and effective relief in such cases.

Litigation concerning the protection of patent rights is adapted only to those possessing patience and wealth; yet we read of the "tragedy of the inventor" with something like complacency. The framers of the Federal Constitution were solicitous about the welfare of the inventor and provided for his protection, but in practice, we are told, the inventor seldom reaps the reward of his invention.

Protracted delay in the trial of personal-injury cases often works a great hardship, particularly when the so-called "mutual" societies connected with large corporations withdraw their relief because of the institution of suit. Such instances are not infrequently brought to our attention, but no relief is offered.

Important reforms, admittedly feasible, are advocated from time to time by the leaders of our profession, but no concerted effort is made to cause the enactment of laws to bring about such reforms. Are we indifferent to these matters concerning the common welfare, or are our bar associations too conservative to consider questions of reform?

Possibly there is some foundation for the statement of Professor Devine that poverty and crime may be attributed in part to the law and the courts.

One of our leading educators points out "that the economist, the statistician, the physiologist, and the psychiatrist have before them an important role to play in the improvement of the law. In the past they have slighted the performance of a service which is peculiarly theirs to render, and have chosen the easier, if not the better, part of censoring the lawyer for not being an expert in their respective fields as well as in his own."

Against this view we have the statement of another writer that "all the branches of science have been working. . . . The law alone has abstained. Yet the science of the law is the one to be served by all of this."

But in any event, so long as crime and poverty do exist,—whether we have contributed thereto or not,—it is our duty to contribute to the alleviation of the one and the eradication of the other.

There are those who believe that the giving of charity is wrong in principle, contending that by accentuating rather than by relieving conditions, a remedy for existing evils will the sooner be brought about; but this theory fails to take into account the injustice that would result to those who may be paying the penalty of the present system.

Relief work in recent years has been conducted along scientific lines, and an effort is made to diagnose and remove the cause of poverty, rather than to temporarily relieve existing distress. In this class of work the lawyer, by contributing the benefit of his experience in the practical affairs of life, might give very material aid. Especially helpful to the Big Brother Movement would be the services of the younger members of the

bar, who might address their intelligence and industry to the handling of delinquent boys and girls, thereby employing their spare moments to the solution of very important and difficult problems.

The lawyer should regard relief work as a matter of *duty*, rather than one of love. The scope of our activities should be no less comprehensive than the following definition of one of our courts: "Charity is not confined to mere almsgiving, or the relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of the happiness of man." In our social relations we might be guided by the quaint doctrine of the philosopher who says: "We're only trustees for humanity for all we make more than we need, just as we're only tenants of God while we live on the earth." This may not be good law, and we might search in vain for such a principle in our standard treatises on "trusts," but it is submitted as a good guide for those interested in the welfare of their fellow man.

If poverty and crime are "manageable," and to a very large extent preventable,—and this seems to be conceded by all,—we should regard it as a solemn and imperative duty to assist in their prevention and eradication by bringing about harmony and justice in the social and economic world. Thus may we hasten the day when humanity "may deliver itself from one of its most terrible scourges," and thereby contribute to the progress of civilization.

Milton Strasburger

The Lawyer's Prayer

A lawyer offered up a prayer
Which he believed was just and fair,
And in his office all alone
Implored the Lord Jehovah's Throne
To help his income to increase
And bid his anxious hours cease,
And aid more favored ones to know
True sympathy for others' woe,
To help one with more cash than wit
To properly distribute it;—
To make all judges truly great,
Be courteous and considerate
And when enjoying righteous fame,
Respect the source from whence *they* came;—
To cause good men who ethics teach
To practise what they glibly preach;—
To cause the lawyers to refrain
From seeking any unjust gain,
And not encourage any cause
Too inconsistent with the laws,
And to their oath bound promise true
Aid every Court to justice do.
He had his labor for his pains
His prayer unanswered still remains,
He feels that he is out of luck
And thinks it to the ceiling stuck
For wicked lawyers on the sly
Declare it never reached the sky.

Wm. D. Fetters

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The Legal Aid Societies

BY ONE WHO KNOWS

LEGAL AID societies are now established in a number of our cities, and are connected with one another for uniformity of work and for mutual understanding. The general public knows but little of the work and purpose of the legal aid societies; by general public must be understood the middle stratum of the population which hardly ever comes in contact with this kind of work. It is the man and the woman with a meager income who need the assistance of the legal aid society, and it has been mainly the employer of labor who felt its weighty and important influence. Both sides, the rich and the poor, profit by this work.

It is hardly of great interest to explain the birth of the first society of this kind and its gradual development into present proportions. In a way, the first society which was started in the city of New York controlled the birth of all the others, and in that sense may have violated the laws against birth control. Yet a very brief review of the New York society may be of interest.

This first society was formed in the year 1876. It was originally intended to protect immigrants (mainly those of German descent) from the wiles and snares laid by so-called "runners" and other kinds of swindlers. These immigrants, ignorant of our language, frequently brought funds wherewith to buy farms and the like, and, never having been in a large city, were accustomed to believe what was told them. Hence they became easy victims to the schemers. To shield such immigrants the first legal aid society was formed by a number of gentlemen, who contributed a small sum of money wherewith to open an office to which they could direct applicants seeking relief and the obtainment of justice. A lawyer was hired by the year.

It soon appeared that the assistance of the attorney in charge of the office was solicited by others than mere strangers or immigrants, and gradually the society was changed in name and in object, to cover the cases of all who stood in need of legal support, but were unable to employ a lawyer in active practice owing to poverty.

The work developed rapidly, so that in these days far more than 40,000 cases receive attention each year in the offices of the legal aid society. Altogether that society handled over 580,000 cases, its existence and work became known to the poor, and its influence was soon felt by employers of labor. Each of the 580,000 applicants complained of some other person or corporation. Hence the society has been in direct touch with more than 1,000,000 inhabitants of the city of New York.

The original idea, of course, was to have the rights of the poor and helpless defended as against the oppressors. Pains were taken, however, not to have the impecunious clients feel that they had become objects of charity. They were requested to pay a retaining fee of 10 cents whenever they were able to do so. This entitled them to look upon the offices of the legal aid society in the same spirit in which a rich man, whose retainer fee was liable to go into the hundreds, claims his rights in his lawyer's office.

But by far the greatest object of this work is to be found in its broader ethical aspect and in its effort to prevent the spreading of anarchism. The main object of the anarchist is, and has been, the destruction of government. The main reason for demanding this remedy has been that the poor do not have rights which the rich are bound to recognize, and that the poor cannot get justice in the courts of the country. Many illus-

trations may be presented to have the readers understand the foundation for these complaints; thus—

A father of a family who had earned some $6 by hard work was denied his pay on a flimsy pretext. On the way home this disappointed father passed the luxurious restaurants on Fifth avenue and was thereby made to feel more deeply that neither he, his wife, nor his little children would be able to get any food that night, or the next morning, and perhaps later on. Naturally this man was on the verge of embracing anarchistic teachings. He saw a judge the next morning and explained his case to him, but he was told that unless he had witnesses, under the rules of our courts, decision would have to be rendered against him, if by two competent witnesses the other side denied the truth of his claim. He then went to a lawyer who had been recommended to him, but that lawyer said: "My dear fellow! I will have to charge you at least $10 to draw your complaint and fight your case in court, pay for service of papers and what not, and since you only claim $6, it will not pay you to bring suit; you had better pocket your loss." After all this the victim finally came to an office of the legal aid society. He received intelligent attention, and his case was handled in such a careful and thorough manner that in a short time he received his due. This experience made him proud of this country, of its institutions; he became a good citizen ever after. Anarchists could no longer hope to have him join their ranks.

Whoever had the privilege of observing numerous cases of the foregoing kind, who had a heart full of sympathy for suffering humanity and the needful strength, had to reach but one conclusion, and that was, to take the victims of injustice to his heart, and, with all his mental strength and power, insure them the obtainment of that which was due them. This in short is the principle on which the New York Legal Aid Society is working, and of the other societies which are now in evergrowing numbers at work in this country. May they remain true to their colors, and continue to labor in the interest of true humanity.

Efforts to reach those among the poor who had been charged with the commission of crime or misdemeanor had to be abandoned for lack of financial support. It would be of great value to the administration of justice if those who are arrested for committing some wrong and kept in prison pending their trial (they having no opportunity to give bail) would be defended by the able attorneys of the legal aid society. In such cases the society would see to it that the truth as to guilt or innocence of the accused was brought forth. It would displace the so-called "shyster lawyer," a parasite upon whom the courts and the accused at present have to depend in many instances, and whose main business is to obtain all the money he can possibly get from the relatives of the accused and then leave him to his fate. Indeed, many of these infamous members of the bar have made it a practice when the day of trial came to advise a plea of guilty on the theory that sentence would be suspended. At this time our prisons contain many who thus pleaded guilty when, in fact, they were quite innocent. This is a kind of abuse which should be taken in hand by all legal aid societies as soon as funds enable them to do so.

It has been charged against the legal aid societies that they frequently allow themselves to be used as instruments of oppression by people who have no just claim against their former employers. But the New York Legal Aid Society, and presumably most of the others, adopted rules which provide that no case shall be received from any party who does not come with clean hands in regard to the transaction in question. Thus, servants who leave their place of employment without notice and without affording an opportunity to replace them have been denied the assistance of the New York Legal Aid Society. As a matter of fact, nearly 1,000 cases of that kind were rejected by the New York Legal Aid Society during the year 1916. This class of cases is of broad interest, and tends to indicate a degree of popular disregard for fair dealing with employers. Hundreds of cooks, mainly colored, contracted the habit of disap-

pearing from their employment without having given any notice of their intention to leave; others of a more spiteful nature left their employers at a time when dinner was supposed to be prepared for invited guests; a coachman left his carriage in front of a store in which his employer was doing some shopping; and similar cases of unfair spirit and disregard of the rights of the other party to the agreement could be mentioned. Those whose cases are refused because of such action will, indeed, learn through sad experience that it is better and more profitable to be fair and honest.

The number of women who seek the assistance of the legal aid society is constantly increasing in proportion to the number of men. At this time the proportion is about 18,000 women to 24,000 men per annum. Of these women nearly 8,000 were native born, the remainder being immigrants some of whom were naturalized; of the men less than 9,000 were native born, the remainder being immigrants of whom some had been naturalized. That women should come in such numbers is greatly to be regretted. When the society began its work the proportion of women to men who sought the intercession of the society was about 1 to 4; now it is about 1 to 1.33. This is largely due to the fact that so many of our women, mainly girls, now support themselves by their own labor, while in the past they were mainly supported by their fathers, brothers, or, if married, by their husbands. That the poor girls are frequently overreached by unscrupulous employers cannot be denied. Seamstresses, for example, working for large stores or business houses, complain that their pitiful allowance of some $2 or $3 per week, for work which they have to do in their own homes in from fourteen or more hours each day, is frequently docked on the plea that a spot appeared on a garment which was laid to their charge and for which the retail value of the whole garment is the basis of deduction. If the legal aid society renders no further service than to see to it that this class of the community, these poor working girls, were thoroughly protected, its existence would be more than justified.

That the New York Legal Aid Society has maintained itself strictly neutral, that is to say, has rendered its service to citizens of the warring countries with complete impartiality, is demonstrated by the fact that none who came were rejected. Thus in 1916 there were:

Russians	not	naturalized	about	4,800
English	"	"	"	4,300
Germans	"	"	"	4,100
Austrians	"	"	"	3,900
Italians	"	"	"	2,000
French	"	"	"	500

That the natives of the United States represented the bulk of applicants is shown by the fact that during the same year more than 16,000 of the applicants had been born among us, of whom nearly one half were women.

The suggestion that the legal aid society takes business from the lawyer in active practice has been made. But it is wholly without foundation. Where a claimant has money wherewith to pay a lawyer, the New York society invariably refuses to take charge of the claim. Each applicant has to state at the very first interview whether he or she has any money in the bank, and, if so, in which bank and how much. If the applicant shows that there are no financial means at his or her command, the case is taken up, otherwise it is refused. But should it afterwards be found that the representation is false, the case is at once dropped by the legal aid society. Nor does the society take charge of accident cases when they have to be brought to court; nor of divorce cases, except for poor and abandoned mothers when it appears that the derelict husband is also poor. Every precaution has been taken not to take from any lawyer any business which he may wish to handle for the usual or reasonable lawyer's fee. On the contrary, the legal aid society is the honest lawyer's best friend; he sends to it cases known as charity cases which are brought to him, but which he cannot handle because he must derive an income from his practice and cannot afford to give his time to the poor and helpless. Hence the legal aid society co-operates with the good lawyers of New York, co-

operates with the courts, with the wage earners, and tries to co-operate with the employers of labor who are open to listen to reason.

On the economical side it may also be of interest to note that the New York Legal Aid Society, which pays for the rent of six offices, the salaries of numerous attorneys, stenographers, clerks, office boys, etc., which hears every case and brings it to a termination, does so at a cost of less than $1.10 per case. This fact alone proves the splendid integrity and reliability of the men and women who perform this extraordinary work. To give exact figures we find that in 1915 the New York Legal Aid Society handled 42,000 cases at a total cost of $45,609, being at the rate of a fraction less than $1.09 per case. In the year 1916 each case cost still less; namely, $1.07. The business brought to the New York society is only in part occupied by claims for money. (More than one third of the number of cases has to do with matters not involving money; in 1916, about 14,400.) Yet the cases involving claims for money, which occupied about two-thirds of the time and efforts of the attorneys during the last forty-one years, enabled the New York society to turn over to its clients $2,438,000 which had been claimed by over 580,000 persons, averaging less than $5 for each case.

The first effort to create an alliance of the legal aid societies of the United States started in Pittsburgh, Pennsylvania, in the year 1911, when delegates from the various societies were invited to meet in that city. The result was the formation of a National Alliance of Legal Aid Societies of the United States of America. After that the number of societies which sent their delegates to the second convention in New York, to the third in Chicago, and to the fourth in Cincinnati, was constantly increasing. There are now more than forty such societies in existence. They seek to exchange their experiences and to determine the solution of new questions that arise from time to time; in addition they send to one another cases that call for action at a distance. Thus, a person in New York, complaining of someone residing in California, has the case referred to the proper California society by action against the defendant, the final result being transmitted to the New York society. This interchange of work has proved useful from every standpoint, and has saved the society in which such case arises from the necessity of working in distant states.

Legal aid societies have also been founded in Europe, and conventions were held from time to time on that continent, resulting in the formation of an European Alliance of Legal Aid Societies.

Finally both these bodies, the American and the European, joined hands in an effort to transmit to one another for action such cases as require service abroad. Under that arrangement many cases were submitted to the New York Legal Aid Society by the European alliance, where someone in Europe, mostly a poor forsaken woman, had a claim against a party who had left for America. Thus, for example, a small money claim was collected in the western part of Canada and sent to the claimant in Poland without deduction, the distance between the plaintiff and the defendant being nearly 8,000 miles.

It is to be hoped that when peace shall be restored this beneficent work may be resumed and extended wherever necessary.

During the more than forty years of its existence the New York Legal Aid Society has won for itself such an enviable reputation and such uniform confidence in the wisdom and good intention of its attorneys, that the largest number of cases brought to it are no longer litigated, but are arbitrated and settled in the offices of the society. Thus, of more than 40,000 cases brought to the attorneys in 1916, barely 2,000 had to be taken into court, the remainder having been settled and satisfactorily adjusted. Work of this kind, therefore, deserves praise, and it also deserves the support of the best in the land, and it is hoped that such support will be freely and cheerfully extended in every community in which this kind of work is faithfully and intelligently conducted.

Alien Enemies as Litigants

BY EDWIN S. OAKES

THE editorial page of my evening paper presents its readers with this rather remarkable piece of misinformation:

RESIDENT ALIENS.

The expected declaration by Congress that a state of war exists between the United States and Germany will automatically alter the status of German subjects residing here. No such person can be accepted as a citizen during the continuance of the war, and our courts will be closed to them, the plea that they are alien enemies being a sufficient answer to any legal remedy they may ask. All commercial partnerships between them and citizens of this country will be dissolved; no patents or copyrights can be issued to them; no moneys due can be transferred to German subjects resident in Germany, and some cases have gone so far as to hold that an action pending in court wherein an alien enemy subject is a plaintiff abates at a declaration of war.

However interesting this may be as an exhibition of editorial sapience, few lawyers having charge of a case for or against a resident alien of enemy nationality will care to take their law from it. The question of the status of such persons as litigants is, however, of considerable present interest; and as it is one with which the present generation of lawyers have happily not heretofore had occasion to become familiar, a résumé of the case law of the subject may be of use to the readers of CASE AND COMMENT.

While it is true that an enemy can neither institute an action during the continuance of the war,[1] nor prosecute an action instituted before its commencement,[2] such disability continues only while he is abiding in his own country;[3] and, accordingly, does not exist where he is permitted to enter or remain in this country.[4] "A lawful residence

[1] Brandon v. Nesbitt (1794) 6. T. R. 23, 3 Revised Rep. 109; 2 Eng. Rul. Cas. 649; Alcinous v. Nigreu (1854) 4 El. & Bl. 217, 24 L. J. Q. B. N. S. 19, 1 Jur. N. S. 16, 3 Week. Rep. 25; Netherlands South African R. Co. v. Fisher (1901) 18 Times L. R. 116; Robinson v. Continental Ins. Co. [1915] 1 K. B. 155, 31 Times L. R. 20, 84 L. J. K. B. N. S. 238, 20 Com. Cas. 125, 112 L. T. N. S. 125, [1914] W. N. 393, 59 Sol. Jo. 7; Bassi v. Sullivan (1914) 32 Ont. L. Rep. 14; Dumenko v. Swift Canadian Co. (1914) 32 Ont. L. Rep. 87; Dangler v. Hollinger Gold Mines (1915) 34 Ont. L. Rep. 78; Wilcox v. Henry (1782) 1 Dall. 69, 1 L. ed. 41; Mumford v. Mumford (1812) 1 Gall. 366, Fed. Cas. No. 9,918; Johnson v. 13 Bales (1814) 2 Paine, 639, Fed. Cas. No. 7,415; Crawford v. The William Penn (1815) Pet. C. C. 106, Fed. Cas. No. 3,372; Elgee v. Lovell (1865) Woolw. 102, Fed. Cas. No. 4,344; Chappelle v. Olney (1870) 1 Sawy. 401, Fed. Cas. No. 2,613; Russ v. Mitchell (1864) 11 Fla. 80; Seymour v. Bailey (1872) 66 Ill. 288; Perkins v. Rogers (1871) 35 Ind. 124, 9 Am. Rep. 639; Dorsey v. Kyle (1869) 30 Md. 512, 96 Am. Dec. 617; Dorsey v. Dorsey (1869) 30 Md. 522, 96 Am. Dec. 633; Dorsey v. Thompson (1872) 37 Md. 25; Levine v. Taylor (1815) 12 Mass. 8; De Jarnette v. De Giverville (1874) 56 Mo. 440; Sanderson v. Morgan (1868) 39 N. Y. 231, affirming 25 How. Pr. 144; Burnside v. Matthews (1873) 54 N. Y. 78; Jackson ex dem. Johnston v. Decker (1814) 11 Johns. 418; Griswold v. Waddington (1818) 15 Johns. 57; Bonneau v. Dinsmore (1862) 23 How. Pr. 397; Cruden v. Neale (1796) 2 N. C. (1 Hayw.) 338; Bishop v. Jones (1866) 28 Tex. 294; Peerce v. Carskadon (1870) 4 W. Va. 234, 6 Am. Rep. 281; Haymond v. Camden (1883) 22 W. Va. 180; Porter v. Freudenburg [1915] 1 K. B. 857, 5 B. R. C. 548.

[2] Le Bret v. Papillon (1804) 4 East, 502, 7 Revised Rep. 618; Luczycki v. Spanish River Pulp & Paper Mills Co. (1915) 34 Ont. L. R. 549; Bell v. Chapman (1813) 10 Johns. 183; Robinson v. Continental Ins. Co. [1915] 1 K. B. 155, 31 Times L. R. 20, 84 L. J. K. B. N. S. 238, 20 Com. Cas. 125, 112 L. T. N. S. 125, [1914] W. N. 393, 59 Sol. Jo. 7; Canadian Stewart Co. v. Perih (1915) 25 Quebec B. R. 158; Currie v. The Josiah Harthorn (1862) Fed. Cas. No. 3,491a; Porter v. Freudenburg, supra.

[3] Seymour v. Bailey, 66 Ill. 288.

[4] Crawford v. The William Penn (1815) Pet. C. C. 106, Fed. Cas. No. 3,372; Otteridge v. Thompson (1814) 2 Cranch, C. C. 108, Fed. Cas. No. 10,618; Hepburn's Case (1830) 3 Bland, Ch. 95; Russel v. Skipwith (1814) 6 Binn. 241; Viola v. Mackenzie, M. & Co. (1915) 24 Quebec B. R. 31, 24 D. L. R. 208.

An alien enemy commorant in the jurisdiction by the license of the government and under its protection may sue, though he came in time of war without a safe conduct. Wells v. Williams (1697) 1 Ld. Raym. 282, 1 Salk. 46, 1 Lutw. 34.

implies protection and a capacity to sue and be sued." [5]

An alien enemy, as such, is not thereby debarred from resorting to the courts for relief during the continuance of the war, but while permitted to remain in the country is exonerated from the disability of enemy, occupying the same position as any other foreigner, except as to carrying on trade with the enemy country,[6] unless he is a spy or has committed other acts of hostility. And in order to entitle an alien subject of an enemy country, residing within the local jurisdiction, to sue, it is not necessary for him to allege and prove that he is not a spy and has not committed acts of hostility, but the exception should be invoked by the one who relies upon it.[7]

A resident alien of enemy nationality is not debarred from maintaining an action by the circumstance of his internment as a civilian prisoner of war.[8] And a prisoner of war taken in an act of hostility may, it seems, sue while in confinement.[9]

The fact that the plaintiff is a woman whose husband is actually engaged in hostile warfare does not alter the situation where the basis of the action is a right individual to herself.[10]

An action can be maintained by a person of enemy nationality who is neither residing nor carrying on business in an enemy country, but resides in either an allied or neutral country and carries on business through his partners in that allied country.[11]

Alien Enemies Residing in the Enemy's Country.

A person of enemy nationality resident in his own country, is, however, under a disability, during the war, to institute or to maintain an action,[12] except upon contracts arising directly or collaterally out of a trade licensed by the sovereign authority of the government in whose courts redress is sought.[13] Such disability is temporary in its nature, and personal, and founded upon reason and policy, and, in a great measure, upon necessity.[14] It is not affected by the circum-

[5] Clarke v. Morey (1813) 10 Johns. 69.

[6] Princes of Thurn and Taxis v. Moffitt [1915] 1 Ch. 58 [1914] W. N. 379, 31 Times L. R. 24, 59 Sol. Jo. 26; Bassi v. Sullivan (1914) 32 Ont. L. Rep. 14; Oskey v. Kingston (1914) 32 Ont. L. Rep. 190; Ragusz v. Les Commissaires du Hâvre de Montreal (1916) 26 Quebec B. R. 87; Volkl v. Rotunda Hospital [1914] 2 Ir. R. 543.

[7] Viola v. Mackenzie, M. & Co. (1915) 24 Quebec B. R. 31, 24 D. L. R. 208.

[8] Schaffenius v. Goldberg (1915) 113 L. T. 949, affirming 32 Times L. R. 31.

[9] See Sparenburgh v. Bannatyne (1797) 1 Bos. & P. 163, 2 Esp. 580, 4 Revised Rep. 772, where it was held that a native of a neutral state taken in an act of hostility on board an enemy's fleet is not disabled from suing while in confinement on a contract entered into as a prisoner of war; and ni which it was intimated that the same conclusion would have been reached had the plaintiff been an alien enemy born.

[10] Princes of Thurn and Taxis v. Moffitt, supra.

[11] Re Duchess of Sutherland (1915) 31 Times L. R. 248.

But compare Russel v. Skipwith (1814) 6 Bin. (Pa.) 241, where the opinion is expressed that the residence of an alien enemy subject in a neutral country cannot form an exception to the reason or policy of the general principle; "because if he can withdraw the money into a neutral country, he may readily transfer it from thence into his own country."

A loyal citizen having a residence in hostile territory, but who leaves the enemy's country at the opening of the war and has his abode during its continuance on loyal or neutral ground, is not to be regarded as an alien enemy and as subject to the disabilities of that position, since money or property recovered by him will not be brought by the recovery within the reach of the enemy and rendered liable to seizure by the enemy for the maintenance of the war. Zacharie v. Godfrey (1869) 50 Ill. 186, 99 Am. Dec. 506.

[12] See cases cited in footnotes 1 & 2, supra.

[13] Crawford v. The William Penn (1815) Pet. C. C. 106, Fed. Cas. No. 3,372; United States v. 100 Barrels of Cement (1862) Fed. Cas. No. 15,945.

[14] De Jarnett v. De Giverville (1874) 56 Mo. 440.

In Sparenburgh v. Bannatyne (1797) 1 Bos. & P. 163, it was said by Eyre, Ch. J.: "I take the true ground upon which the plea of alien enemy has been allowed is, that a man, professing himself hostile to this country, and in a state of war with it, cannot be heard if he sue for the benefit and protection of our laws in the courts of this country. We do not allow even our own subjects to demand the benefit of the law in our courts, if they refuse to submit to the law and the jurisdiction of our courts. Such is the case of an outlaw."

But in Viola v. Mackenzie M. & Co. (1915) — Quebec, —, 24 D. L. R. 208, it is said that the restriction of the right to sue does

stance that he sustains the character of consul of a neutral state.[15]

The common-law rule by which an alien enemy is precluded from enforcing his rights of action during the continuance of war is not abrogated by art. 23 (h) of chap. 1, § 2, of the Annex to the Hague Convention of 1907, by which it is forbidden to "declare abolished, suspended, or inadmissible the right of the subjects of the hostile party to institute legal proceedings," but such provision is, in view of its collocation, to be read as forbidding any declaration by the military commander of a belligerent force in the occupation of the enemy's territory which will prevent the inhabitants of that territory from using their courts of law in order to assert or protect their civil rights.[15a]

This disability extends to suits in which the nonresident enemy is the real party in interest. Thus, an action is not maintainable by an agent on behalf of his principal where the principal is an alien enemy;[16] nor may he be appointed as a receiver of the assets of his principal's business for the purpose of enabling him to collect debts due to his principal.[17] So an alien enemy cannot bring suit in the name of a trustee, not an alien, as the public policy which forbids that the property sued for should be carried out of the country to enrich the enemy would be violated equally in the one case as in the other.[18] And it has been held that an action for wrongful death cannot be maintained by the administrator of a decedent where the persons for whose benefit the action is given are alien enemies.[19] Alien enemies are incapable of making a valid demise for the purpose of maintaining an action of ejectment.[20]

On the other hand, the fact that one of the plaintiffs, who is merely a nominal party, and who cannot control the suit nor collect the judgment, is a public enemy, is no ground for dismissing the petition of the beneficial plaintiff who is not an enemy.[21] And where it is pleaded in abatement that one of the plaintiffs is an alien enemy, the other plaintiff may move to amend his writ by striking out the name of his coplaintiff.[22]

The disability of an alien enemy to sue is so extended as to prevent him from gaining any advantage for himself and his country; and therefore he is not only disabled from suing for the purpose of procuring any immediate relief, but he is not allowed to obtain testimony by a bill of discovery in equity so as thereby to lay a foundation for obtaining relief elsewhere;[23] though where sued he may have a discovery for the purpose of conducting his defense, just as he would be allowed process to compel the attendance of his witnesses.[24]

The right to recover a debt being only suspended during, and not extinguished by, the war, an alien enemy may make a claim in a bankruptcy proceeding, though dividends thereon will be withheld until

not result from the incapacity of the foreigner, but from the fact that the enemy country will profit by executing a judgment in his favor.

"By the policy of the law, alien enemies shall not be admitted to actions to recover effects which may be carried out of the Kingdom to weaken ourselves and enrich the enemy." 1 Bacon, Abr. "Aliens," D.

[15] Albretcht v. Sussmann (1813) 2 Ves. & B. 323, 13 Rev. Rep. 110.

[15a] Porter v. Freudenberg [1915] 1 K. B. 857, 5 B. R. C. 548.

[16] Brandon v. Nesbitt (1794) 6 T. R. 23, 3 Revised Rep. 109, 2 Eng. Rul. Cas. 649. But the fact that a suit is prosecuted on behalf of alien enemies by an agent, himself under no disability to sue, cannot be taken advantage of under a plea of the general issue. Flindt v. Waters (1812) 15 East, 260, 13 Revised Rep. 457.

[17] Maxwell v. Grunhut (1914) 31 Times L. R. 79, 59 Sol. Jo. 104.

[18] Crawford v. The William Penn (1815) Pet. C. C. 106, Fed. Cas. No. 3,372. It has, however, been held that it is no defense to an action that the plaintiff sued in trust for an alien enemy (Daubuz v. Morshead (1815) 6 Taunt. 332, 16 Revised Rep. 623). The theory of the latter case doubtless was that the ground of the objection goes rather to the enforcement of the judgment than to the maintenance of the suit.

[19] Dangler v. Hollinger Gold Mines (1915) 34 Ont. L. Rep. 78.

[20] Jackson ex dem. Johnston v. Decker (1814) 11 Johns. 418.

[21] Hoskins v. Gentry (1865) 2 Duv. 285; Mercedes Daimler Motor Co. v. Mandslay Motor Co. (1915) 31 Times L. R. 178, 32 R. P. C. 149, [1915] W. N. 54.

[22] Arnold v. Sergeant (1783) 1 Root, 86.

[23] Hepburn's Case (1830) 3 Bland Ch. 95; Daubigny v. Davallon (1794) 2 Anstr. 463.

[24] Albretcht v. Sussmann (1813) 2 Ves. & B. 323, 13 Revised Rep. 110.

the conclusion of peace.[25] But an alien enemy resident in the enemy country cannot be heard during the war to complain of the rejection of a claim filed by him against a bankrupt's estate.[26]

Our courts have held that an alien enemy cannot appear as a claimant of libeled property;[27] and an eminent English judge[28] has laid down the rule that a prize court, though a court of nations, is so far a domestic court that an alien enemy cannot sue therein unless under particular circumstances that *pro hac vice* discharge him from the character of an enemy, such as his coming under a flag of truce, a cartel, a pass, or some other act of public authority that puts him in the King's peace *pro hac vice*. But under the present practice of the English prize courts, any alien enemy claiming any protection, privilege, or relief under a convention of the Hague Peace Conference is entitled to appear as a claimant and argue his claim before the court.[29]

Although there is some conflict of opinion,[30] the better view appears to be that the disability to sue, arising from the fact that the plaintiff is an alien enemy, may not be waived.[31] The objection is not a matter of privilege in the defendant, but is based upon considerations of public policy, of which the court should be held bound to take notice. But the error, if any, in permitting an action brought by an alien enemy to proceed to judgment, becomes immaterial where peace has been concluded.[32]

A plea of alien enemy is defeated by the conclusion of a treaty of peace;[33] and a suit, not being abated during the war, cannot be abated after the conclusion of peace.[34]

Effect of War on Suit Previously Instituted, Judgment Recovered, or Appeal Pending.

In some jurisdictions it has been held that where an action has been commenced before the war, the proceeding is only suspended,[35] whereas a suit brought after the commencement of the

[25] Ex parte Boussmaker (1806) 13 Ves. Jr. 71, 9 Revised Rep. 142.

[26] Re Wilson (1915) 84 L. J. K. B. N. S. 1893.

[27] Johnson v. 13 Bales (1814) 2 Paine, 639, Fed. Cas. No. 7,415; United States v. 1756 Shares (1863) Fed. Cas. No. 15,960a; United States v. The Isaac Hammett (1862) Fed. Cas. No. 15,446.

[28] Sir Wm. Scott (afterwards Lord Stowell) in The Hoop (1799) 1 C. Rob. 196.

[29] The Möwe (1914) 84 L. J. Prob. N. S. 57, [1915] P. 1, 112 L. T. N. S. 261.

[30] In McNair v. Toler (1875) 21 Minn. 175, where the action was instituted before the war, it was held that the objection that the plaintiff was technically an alien enemy, like all other objections to his capacity to sue, was waived by the omission to plead it in abatement.

And see also Burnside v. Matthews (1873) 54 N. Y. 78, where it was said that as the defense is merely technical and dilatory, growing out of a supposed temporary disability, it must, to be effectual, be pleaded specially and with certainty to a particular intent.

It should, perhaps, be pointed out that these decisions, while permitting a recovery of judgment in the absence of objection duly taken, are in no wise inconsistent with the view that the court may, of its own motion, refuse process for its enforcement during the war.

[31] In Janson v. Driefontein Consol. Mines [1902] A. C. 484, 71 L. J. K. B. N. S. 857, 87 L. T. N. S. 372, 18 Times L. R. 796, 7 Com. Cas. 268, Lord Davey observed that he had some doubt whether the objection of alien enemy might be waived, it being one based on considerations of public policy of which the court should be held bound to take notice. This *dictum* is cited with approval in Bassi v. Sullivan (1914) 32 Ont. L. Rep. 14; and a similar doubt was expressed in Robinson v. Continental Ins. Co. [1915] 1 K. B. 155, 31 Times L. R. 20, 84 L. J. K. B. N. S. 238, 20 Com. Cas. 125, 112 L. T. N. S. 125, [1914] W. N. 393, 59 Sol. Jo. 7.

And in Dorsey v. Kyle (1869) 30 Md. 512, 96 Am. Dec. 617, it is said that the plea of alien enemy is not a matter of privilege, but a disability that suspends the right to maintain an action in the courts of the country to which the party is an enemy.

Where, during the pendency of an action, the plaintiff becomes an alien enemy, the court has no legal power to render judgment (Brooke v. Filer (1871) 35 Ind. 402); and a decree rendered in a cause instituted before the commencement of war, the parties to which resided on opposite side of the military line and were consequently enemies to each other, is without legal validity. Stephens v. Brown (1884) 24 W. Va. 234.

[32] Bishop v. Jones (1866) 28 Tex. 294.

[33] Johnson v. Harrison (1815) Litt. Sel. Cas. 226.

[34] Hamersley v. Lambert (1817) 2 Johns. Ch. 508.

[35] Elgee v. Lovell (1865) Woolw. 102, Fed. Cas. No. 4,344; Hutchinson v. Brock (1814) 11 Mass. 119; Levine v. Taylor (1815) 12 Mass. 8; Bell v. Chapman (1813) 10 Johns. 183; Luczycki v. Spanish River Pulp & Paper Mills Co. (1915) 34 Ont. L. Rep. 549.

war will be dismissed,[36] even though if dismissed the statutory period of limitation may possibly run and so put an end to the action.[37]

In other cases it is held that where the plaintiffs become alien enemies subsequent to the institution of the suit, the action should be dismissed rather than continued on the docket;[38] but the dismissal should be without prejudice.[39]

The court will refuse to dissolve an injunction against the enforcement of a judgment where since the injunction has been obtained the judgment creditors have become alien enemies.[40]

Where the plaintiff in a suit becomes an alien enemy after judgment, the court will not, on motion, stay or set aside the execution, but the defendant may avail himself of his remedy at law.[41]

According to an early case in the United States Supreme Court,[42] it would seem that if war breaks out during the pendency of a writ of error, the plaintiff in error cannot take advantage of the fact that the original plaintiff is an alien enemy, but the judgment may be affirmed; but a recent English case holds that an alien enemy who is plaintiff in an action commenced before the outbreak of war has no right of appeal, such right being suspended until the conclusion of peace.[43] Where he is a party defendant he may appeal against any decision, final or interlocutory, that may be given against him.[43½]

As Parties Defendant.

While the existence of war closes the courts of each belligerent to the citizens of the other, it does not prevent the citizens of one belligerent from taking proceedings for the protection of their own property in their own courts against the citizens of the other whenever the latter can be reached by process;[44] since the reason of policy which suspends the right of action of an alien enemy during the war does not apply where the suit is not by one of the enemy to collect his resources, but by a citizen to put himself in means.[45] A bill in equity may be brought against an alien enemy to remove a cloud on title, and service may be made by publication.[46]

But though a nonresident alien enemy may be made a party defendant, he may

[36] Whelan v. Cook (1867) 29 Md. 1.

[37] Dangler v. Hollinger Gold Mines (1915) 34 Ont. L. Rep. 78.

[38] Howes v. Chester (1861) 33 Ga. 89.

[39] Dumenko v. Swift Canadian Co. (1914) 32 Ont. L. Rep. 87.

But see in this connection the remarks of Boyd, C., in Luczycki v. Spanish River Pulp & Paper Mills Co. (1915) 34 Ont. L. Rep. 549, who said that "the Dumenko Case, as stated in the judgment, is founded on Le Bret v. Patillon (1804) 4 East, 502, 7 Revised Rep. 618, and Brandon v. Nesbitt (1794) 6 T. R. 23, 3 Revised Rep. 109, 2 Eng. Rul. Cas. 649. Now in Brandon v. Nesbitt, the plaintiff was an alien enemy at the outset, and so was never rightly in court. Le Bret v. Patillon is in point, for there the action was rightly brought, but its course was intercepted by declaration of war. The defendant's contention was made by way of dilatory plea, and the judgment was that the plaintiff should be barred from further having and maintaining the action. Nothing is said as to costs, and in form the action was not dismissed. In the Dumenko Case the judgment may well be rested on the fact that the plaintiff was in default in giving security for costs. By the order, if security not given the action was to be dismissed. The plaintiff, the alien enemy, moved to obtain an extension of time, which favor will not be granted to an alien enemy, and the action was well dismissed, with costs."

[40] Taylor v. Morgan (1812) 2 Mart. (La.) 263.

[41] Vanbrynen v. Wilson (1808) 9 East, 321; Buckley v. Lyttle (1813) 10 Johns. 117.

[42] Owens v. Hanney (1813) 9 Cranch, 180, 3 L. ed. 697.

[43] Porter v. Freudenburg [1915] 1 K. B. 857, 5 B. R. C. 548.

And see also, to the same effect, Canadian Stewart Co. v. Terih (1915) 25 Q. B. R. 158, in which it was held that an appellee who is a nonresident alien enemy is not to be regarded as having the status in the appellate court of a defendant resisting the demand which the appellant makes to have the judgment reversed.

Where two coplaintiffs have given notice of appeal before the outbreak of war and one of them has on the outbreak of war become an alien enemy, the appeal must be suspended during the war. Actien-Gesellschaft Für Anilin-Fabrikation v. Levinstein (1915) 31 Times L. R. 225, 32 R. P. C. 140, 112 L. T. N. S. 963 [1915] W. N. 85, 84 L. J. Ch. 842.

[43½] Porter v. Freudenberg, supra.

[44] Masterson v. Howard (1873) 18 Wall. 99, 21 L. ed. 764; Porter v. Freudenberg [1915] 1 K. B. 857, 5 B. R. C. 548.

[45] Seymour v. Bailey (1872) 66 Ill. 288. In Dorsey v. Thompson (1872) 37 Md. 25, it is said: "Whether the ground of the defense of alien enemy be the possible benefit that might result to the enemy from allowing the

not, of course, prosecute a counterclaim.[47]

The liability of an alien enemy to be sued carries with it the right to use all the means and appliances of defense.[48] He is entitled to appear by attorney and be heard in his defense. "It would be revolting to the rules of justice which govern a court to drag therein a party and then say to him, 'Although you were properly before the court, you are an alien enemy and shall not be heard, yet judgment shall be rendered against you.'"[49] He may appear by attorney to defend proceedings for the confiscation of his property, and may sue out a writ of error.[50] He may have a discovery for the purpose of conducting his defense, just as he will be allowed process to compel the attendance of his witnesses.[51]

But it seems that in the event of the defendant's succeeding in the action, no order which will entitle him to payment of costs during the war ought to be made, and his right to issue execution should be suspended until the cessation of the state of hostilities.[52]

An alien enemy who is respondent to a petition for revocation of a patent, and against whom the operation of a decree revoking the patent is suspended by an appeal, cannot claim that the hearing of the appeal must be suspended during the war.[52½]

A defendant's privilege of being sued in the county where he resides ceases when he voluntarily becomes an alien enemy.[53]

Although the enemy character of a defendant does not preclude the maintenance of an action against him, it is nevertheless essential to the rendition of a valid judgment that the court ac-

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plaintiff to recover, or the want of claim or right to the use of the courts of the country by the plaintiff, in consequence of his status as an enemy, the reason that creates the disability of the party as plaintiff does not apply to him as defendant. As plaintiff, the party attempts to exercise a privilege that he has forfeited, at least for the time; but, as defendant, he is sought to be made amenable for what justice may require of him. The mode and manner of acquiring jurisdiction, and making the proceedings binding on him, is another and a different question from that of his total exemption from suit pending hostilities. This depends upon the remedial processes of the courts; and, as is well known, they are generally wholly inadequate during a state of actual war in suits *in personam*, to furnish the foundation for exercising jurisdiction over alien enemies residing in the enemy's territory. But still these enemies are liable to be sued, if within the reach of process."

And see also to the same effect, Robinson v. Continental Ins. Co. [1915] 1 K. B. 155, 31 Times L. R. 20, 84 L. J. K. B. N. S. 238, 20 Com. Cas. 125, 112 L. T. N. S. 125, [1914] W. N. 393, 59 Sol. Jo. 7; Cocks v. Izard (1871) Fed. Cas. No. 2,934; Russ v. Mitchell (1864) 11 Fla. 80; Buford v. Speed (1875) 11 Bush. 338; Dorsey v. Kyle (1869) 30 Md. 512, 96 Am. Dec. 617; McNair v. Toler (1875) 21 Minn. 175; De Jarnette v. De Giverville (1874) 56 Mo. 440; Compagnie Universelle de Telegraphie et de Telephonie sans Fil v. United States Service Corporation (1915) 84 N. J. Eq. 604, 95 Atl. 187; Griswold v. Waddington (1818) 15 Johns. 57; Rodgers v. Dibrell (1880) 6 Lea, 69.

[46] Lee v. Rogers (1874) 2 Sawy. 549, Fed. Cas. No. 8,201.

[47] Robinson v. Continental Ins. Co. [1915] 1 K. B. 155, 31 Times L. R. 20, 84 L. J. K. B. N. S. 238, 20 Com. Cas. 125, 112 L. T. N. S. 125, [1914] W. N. 393, 59 Sol. Jo. 7.

[48] Seymour v. Bailey (1872) 66 Ill. 288; and see also Compagnie Universelle de Telegraphie et de Telephonie sans Fil v. United States Service Corp. supra.

[49] Russ v. Mitchell (1864) 11 Fla. 80.

There is no rule of common law which prevents a nonresident alien enemy appearing and conducting his defense. Robinson v. Continental Ins. Co. [1915] 1 K. B. 155. In this case the court, referring to the difficulties attending suit against a nonresident alien enemy, said: "In this case I understand that the presence of the alien enemy in this country at the trial is not necessary and is not contemplated, and no difficulty arises such as might otherwise be created by the impossibility of his getting here, and no question arises in this case as to whether an express license to come into this country is necessary, or whether a license would be implied from the fact of the process of the court, and I express no opinion upon it. It may be that in this case the war has so hampered the defendants in the preparation of their case, in their witnesses, or in other ways, that it would be right to grant them a postponement on those grounds. If any application is made to postpone the trial on grounds of that character, it will be dealt with on its merits."

[50] McVeigh v. United States (1870) 11 Wall. 259, 20 L. ed. 80.

[51] Albretcht v. Sussmann (1813) 2 Ves. & B. 323, 13 Revised Rep. 110.

[52] See Robinson v. Continental Ins. Co. [1915] 1 K. B. 155.

[52½] Porter v. Freudenberg [1915] 1 K. B. 857, 5 B. R. C. 548.

[53] Russ v. Mitchell (1864) 11 Fla. 80.

quire jurisdiction. Unless he has some agent in the country upon whom process may be served, it is generally necessary to resort to service by publication; and whether jurisdiction may be acquired in this way is a controverted question. Inasmuch as intercourse between citizens of belligerent states is ordinarily unlawful, the status of an enemy differs from that of an ordinary nonresident defendant, and this has influenced some courts to hold that constructive service upon such an one is ineffectual.[54] According to other courts, however, it would seem that the nonintercourse rule is to be relaxed *pro hac vice*, since they hold that service by publication is good.[55]

In a Maryland case,[56] the court, in discussing the validity of a judgment rendered against an alien enemy upon service by publication, said:

> The argument in favor of the appellant, stated in its strongest light, is this: The object of the order of publication, made under the law affecting an absent or nonresident defendant, is to notify and warn him to appear by a certain day in court and defend his rights; that no man can have those rights impaired in any court without an opportunity of so defending them, and no court has jurisdiction over them until it has afforded him such opportunity; that the notice thus given is equivalent to personal notice by the service of a writ, and all proceedings are void unless one notice or the other is given; that whilst war exists the notice by order of publication is utterly futile and unlawful, all intercourse between the citizens of the respective governments being prohibited; that it could not possibly reach the party for whom it was intended, because no communication could be had between the place of publication and the place where the party intended to be notified resided at the time; and even if by legal possibility such notice could reach him, still, being an enemy, he could not appear and defend; the notice, therefore, in this case was a notice which could not possibly reach the appellant, requiring him to do a thing which he could not possibly perform,—a notice impossible to be known, to do a thing impossible to be done,—and such an order of publication must by consequence be utterly futile, illegal and void. But a brief examination of the provisions, purpose, and object of the law relating to nonresident owners of property here situated, who are made defendants in chancery suits in this state affecting such property, will, we think, afford a sufficient answer to this argument. All that the law requires in such cases is that the court shall order notice to be given by publication in one or more newspapers, stating the substance and object of the bill, and warning the nonresident to appear on or before a day fixed in its order, and show cause why the relief prayed should not be granted, such notice to be published as the court may direct, but not less than once a week for four successive weeks, three months before the day fixed by the order for the appearance of the party, and if he does not appear at the time stated, the court is then authorized to proceed in the case by passing a decree *pro confesso*, or taking testimony *ex parte*, and then to final decree upon the subject-matter. . . . Strict compliance with the requisites of the statute is demanded; but when this is done and the case has proceeded to final decree, the property sold, and title acquired thereunder, the courts will not listen to any evidence that the party has not or could not actually receive the notice or make his appearance. It is simply a statutory mode of conferring upon the court power to pass judgment on property, the subject-matter of suit within its jurisdiction, when the owner is beyond the reach of its process. The courts in such cases act upon the presumption of notice which they will not allow to be rebutted. The whole theory of the law of constructive notice rests upon this foundation. In numerous cases an equal impossibility of receiving and complying with the notice exists as in the case of war. A party may be sick or imprisoned in a distant land at such place and under such circumstances that within the time limited no notice could by any possibility reach him; but this or any other *vis major*, or act of God, will not oust the jurisdiction of the court over his property once obtained by pursuing the requirements of the statute, or defeat the title acquired under its final decree thereon. If war and residence in enemy's territory can be set up to avoid the proceedings and defeat the title, there is no good reason why any other cause creating an equal impossibility of receiving notice should not be allowed to have the same effect. This would defeat the very object of the law, embarrass judicial proceedings, and render insecure titles derived under judicial sales.

[54] Sturm v. Fleming (1883) 22 W. Va. 404; Livingston v. Jordan (1869) Chase, 454, Fed. Cas. No. 8,415; Dorr v. Gibboney (1878) 3 Hughes, 382, Fed. Cas. No. 4,006; Selden v. Preston, 11 Bush, 191; Rockhold v. Blevins (1873) 6 Baxt. 115; Walker v. Day (1874) 8 Baxt. 77; Haymond v. Camden (1883) 22 W. Va. 180.

[55] In Seymour v. Bailey (1872) 66 Ill. 288, it was held that a presidential proclamation, issued in pursuance of an act of Congress prohibiting all commercial intercourse with the enemy, does not suspend the operation of statutes authorizing the prosecution of suits against nonresident defendants upon constructive service by publication of notice, so as to deprive the courts in such cases of all jurisdiction and to render their proceedings null and void.

[56] Dorsey v. Dorsey (1869) 30 Md. 522, 96 Am. Dec. 633.

There is a third group of cases which, without going so far as to assert that jurisdiction may be acquired by constructive service over a nonresident enemy, hold that a citizen may be proceeded against by publication as an absentee, notwithstanding he has become an adherent of the enemy.[57]

The same difference of opinion pervades the decisions on the question whether the property of a nonresident alien enemy may be reached by attachment.[58]

Where it is sought to enforce a mortgage, deed of trust, or other lien for the security of a debt, a further difficulty is raised by the contention that as payment of a debt during the war is unlawful, it is not legally due, and therefore that no resort may be had to the security.[59]

Some courts have, however, declined to give effect to the above contention where the debtor was originally a citizen of the state, but has become an adherent of the enemy,[60] apparently on the illogical ground that the conduct of such a person deserves to be visited with a penalty. These cases, which were occasioned by the Civil War, and the decisions in which may have been influenced by partisan feeling, are open to criticism as disregarding the legal right of all the citizens of a nation to take sides in a civil conflict, together with the consequence attaching to the status of belligerents so acquired.

A distinction between sales by judicial proceedings, and a sale under a power contained in a mortgage or deed of trust, is made in a United States Su-

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[57] Thus in Dorsey v. Thompson (1872) 37 Md. 25, it was held that an alien enemy may be served by publication where he has become such since the commencement of the war, at which time he was a resident citizen.

In Ludlow v. Ramsey (1871) 11 Wall. 581, 20 L. ed. 216, it is held that if a party voluntarily leaves his country or his residence for the purpose of engaging in hostilities against the former, he cannot complain of legal proceedings regularly prosecuted against him as an absentee.

In Peerce v. Carskadon (1870) 4 W. Va. 234, 6 Am. Rep. 281, a statute providing that if parties were in sympathy with the Rebellion, and had left their usual places of abode, and were out of the reach of civil process for ninety days, they were to be regarded as nonresidents, was held not to be invalid as violating vested rights or as an *ex post facto* law.

[58] In Thomas v. Mahone (1872) 9 Bush, 111, it was held that it does not follow because a person is an alien enemy, with whom all unlicensed communication is forbidden, that resident creditors may not sue him and subject to the payment of their debts such of his property as may be found within the jurisdiction.

The land of a nonresident enemy may be sold for the payment of his debts. Crutcher v. Hord (1868) 4 Bush, 363.

The fact that a debtor is an alien enemy will not preclude his creditor from proceeding by attachment against his property. Mixer v. Sibley (1869) 53 Ill. 61; Selden v. Preston, 11 Bush. 191; Jenkins v. Hannan (1884) 26 Fed. 657.

A citizen creditor may sue by attachment to obtain satisfaction from a nonresident alien enemy debtor. Hepburn's Case (1830) 3 Bland, Ch. 95.

The property of one who voluntarily becomes an alien enemy is subject to attachment. "His being an alien enemy does not make him the less a nonresident debtor." Dorsey v. Kyle (1869) 30 Md. 512, 96 Am. Dec. 617.

But in Haymond v. Camden (1883) 22 W. Va. 180, it was held that a suit instituted by a creditor during the war to enforce the payment of his debt by attachment against the property of a debtor who is in the position of an alien enemy, or to enforce a vendor's lien, is without legal sanction or authority, and all proceedings had therein are void.

[59] Kanawha Coal Co. v. Kanawha & O. Coal Co. (1870) 7 Blatchf. 391, Fed. Cas. No. 7,606; Walker v. Beauchler (1876) 27 Gratt. 511; Grinnan v. Edwards (1883) 21 W. Va. 347; Dean v. Nelson (1869) 10 Wall. 158, 19 L. ed. 926; Lasere v. Rochereau (1873) 17 Wall. 437, 21 L. ed. 694.

[60] So, in Harper v. Ely (1870) 56 Ill. 179, it was held that a sale under a mortgage is valid where the mortgagor left the state for the purpose of engaging in hostilities.

The real estate of a nonresident enemy situated in the state may be subject to the payment of a debt contracted before the war began and secured by a mortgage on the property itself, executed and recorded while the debtor himself was a resident of the state. Dorsey v. Dorsey (1869) 30 Md. 522, 96 Am. Dec. 633.

And a bill of equity will not lie to redeem lands sold under a deed of trust on the ground that the maker was, when the land was sold, a member of the enemy's forces and a prisoner of war, where it further appeared that he had voluntarily become an alien enemy. Black v. Gregg (1875) 58 Mo. 565.

In Johns v. Slack (1875) 2 Hughes, 467, Fed. Cas. No. 7,363, it was held that lands might be sold to satisfy the vendor's claim for unpaid purchase money, though the purchaser was absent during war with the other

preme Court case,[61] where it is said:

The argument is that, inasmuch as all commercial intercourse was forbidden between the people of the loyal states and those residing in the insurrectionary district, both by virtue of the act of Congress and by the principles applicable to nations in a state of war, all processes for the collection of debts were suspended, and that the complainants being forbidden by these principles to pay the debt, there could be no valid sale of the land for default of such payment. The case before us was not one of a sale by judicial proceeding. No aid of a court was needed or called for. It was purely the case of the execution of a power by a person in whom a trust had been reposed in regard to real estate, the land, the trustee, and the *cestui que trust* all being, as they had always been, within a state whose citizens were loyally supporting the nation in its struggle with its enemies. . . . The debt was due and unpaid. The obligation which the trustee had assumed on a condition had become absolute by the presence of that condition. . . . The power under which the sale was made was irrevocable. The creditor had both a legal and a moral right to have the power made for his benefit executed. The enforced absence of the complainants, if it be conceded that it was enforced, does not in our judgment afford a sufficient reason for arresting his agent and the agent of the creditor in performing a duty which both of them imposed upon him before the war began. His power over the subject was perfect; the right of the holder of the note to have him exercise that power was perfect. Its exercise required no intercourse, commercial or otherwise, with the complainants. No military transaction would be interfered with by the sale. The enemy, instead of being strengthened, would have been weakened by the process. The interest of the complainants in the land might have been liable to confiscation by the government, yet we are told that this right of the creditor could not be enforced, nor the power of the trustee lawfully exercised. No authority in this country or any other is shown to us for this proposition. It rests upon inference from the general doctrine of absolute nonintercourse between citizens of states which are in a state of public war with each other, but no case has been cited of this kind even in such a war. It is said that the power to sell in the deed of trust required a notice of the sale in a newspaper, that this notice was intended to apprise the complainants of the time and place of sale, and that inasmuch as it was impossible for such notice to reach the complainants, no sale could be made. If this reasoning were sound, the grantors in such a deed need only go to a place where the newspaper could never reach them to delay the sale indefinitely, or defeat it altogether. But the notice is not for the benefit of the grantor in the sense of notice to him. It is only for his benefit by giving notoriety and publicity of the time, the terms, and the place of sale, and of the property to be sold, that bidders may be invited, competition encouraged, and a fair price obtained for the property. As to the grantor, he is presumed to know that he is in default and his property liable to sale at any time; and no notice to him is required.

belligerent power and had no notice of the motion for the sale, or of the sale itself.

[61] Washington University v. Finch (1873) 18 Wall. 106, 21 L. ed. 818.

So, also, in other cases it has been held that the absolute power to sell on default conferred upon the trustee in a deed of trust to secure a debt may be exercised notwithstanding the debtor is an alien enemy. De Jarnette v. De Giverville (1874) 56 Mo. 440 (where, however, it appeared that the time the default was made there was no suspension of intercourse between the state of the plaintiff and that of the defendant); Martin v. Paxson (1877) 66 Mo. 260 (where it appeared that the trustor had voluntarily gone within the enemy's lines); Mitchell v. Nodaway County (1883) 80 Mo. 257; Washington University v. Finch (1873) 18 Wall. 106, 21 L. ed. 818; Willard v. Boggs (1870) 56 Ill. 163; Bush v. Sherman (1875) 80 Ill. 160.

[62] Three Spanish Sailors (1780) 2 W. Bl. 1324.

[63] Rex v. Schiever (1759) 2 Burr. 765.

[64] Furly v. Newnham (1780) 2 Dougl. K. B. 419.

[65] Rex v. Vine-Street Police Station (1915) 113 L. T. N. S. 971; Re Gusetu (1915) 29 Can. Crim. Cas. 427.

Right to Habeas Corpus.

A prisoner of war is not entitled to the privilege of the writ of habeas corpus to examine into the propriety of his detention,[62] even though he is the subject of a neutral power and had been forcibly compelled to serve on board the enemy's ship where he was taken.[63] It has even been held that the court will not grant a habeas corpus ad testificandum to bring up a prisoner of war as a witness.[64]

The rule that the court will not entertain an application for habeas corpus from a prisoner of war has been held to apply to a civilian subject of an enemy state who has been interned as a measure of public safety.[65]

Edwin S. Oakes

Charity and Justice

BY MORNAY WILLIAMS

of the New York City Bar

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THERE is an amusing, though probably apocryphal, story told of Sir Walter Scott. It is said that one day on entering his library at Abbotsford he found a simple-minded Highland friend of his seated there and carefully reading the dictionary, page after page. Sir Walter inquired whether he found any interest in the miscellaneous definitions, and the Highlander replied, "They're verra guid stories, but unco short."

The philosophical use of the dictionary throws a great deal of light on human character and development as revealed in the changing meanings of words. In the Century Dictionary, the first definition given of the word "charity" is: "1. In New Testament usage, love, in its highest and broadest manifestation," and further down the column, "Specifically—5. Alms; anything bestowed gratuitously on a person or persons in need." The first definition quoted not only describes correctly the use of the word when Wycliffe made his translation of the Bible, but that which obtained when the King James version was made, and it is worth while to contrast the first definition with the fifth, as quoted above, in connection with a passage from the King James version of the thirteenth chapter of the First Epistle to the Corinthians, "Though I bestow all my goods to feed the poor, and though I give my body to be burned, and have not charity, it profiteth me nothing." It is perfectly evident from this quotation that the specific meaning—which is now the ordinary meaning of the word "charity"—was, at the time the King James version was made, not conceived of as charity at all. All one's goods could be given in alms, and yet the one who gave might possess no charity. How far this is true, and why it is true, is illustrated by a little further excursion into the dictionary and later literature. The next word in the Century Dictionary after the word "charity" is "charity boy," defined as, "A boy brought up at a charity school or on a charitable foundation," and what that connotes is very well set forth in Dickens's description of Noah Claypole in Oliver Twist, "Noah was a charity boy, but not a workhouse orphan. . . . The shopboys in the neighborhood had long been in the habit of branding Noah, in the public streets, with the ignominious epithets of 'leathers,' 'charity,' and the like; and Noah had borne them without reply. But, now that fortune had cast in his way a nameless orphan, at whom even the meanest could point the finger of scorn, he retorted on him with interest. This affords charming food for contemplation. It shows us what a beautiful thing human nature may be made to be; and how impartially the same amiable qualities are developed in the finest lord and the dirtiest charity boy."

These excerpts indicate quite clearly what was the quality which inhered in the original meaning of the word "charity." It connoted a moral and spiritual quality, a love or affection, which is now perhaps more nearly paralleled, though not fully expressed, by the word "brotherhood," as far as it applies to human relationships. One of the effects of this

quality existing in any individual or community would, of course, be the relief of need. But, when the act of relief is so far crystallized as to become a custom or an institution, it is entirely possible for the quality of love, or charity, to be so far withdrawn that the custom or institution remains without its original and instigating cause. Moreover, in its essence, love must be so far vital that it is voluntary; that is to say, in order to possess the higher qualities it must not be part of a system, but an outflowing of spontaneous emotion. Now, the history of the word "charity," as revealed in these definitions, explains in a large measure the ill repute into which both the word and that which it specifically connotes to-day have fallen in the minds of large numbers of persons.

There is very little doubt that the opposition supposed to exist between the words "justice" and "charity" is not merely the slogan of a few labor leaders, but represents a very real state of feeling obtaining among large sections of the people in this country, and particularly among poor people. There is also very little doubt that the reason for this apparent opposition is to be found in the crystallization of the methods of helpfulness into institutions, as over against the voluntary and unsystematized expression of individual good will. Now the questions to be discussed in this paper are: First, whether this is too large a price to pay for the systematizing of charity; and, secondly, what remedies, if any, can be found.

Before proceeding with the discussion of these questions, it is well to point out that the matter is a far wider one than that of the desirability of organized or associated charity, which, for the most part, refers to almsgiving in the limited sense; namely, the relief of need, but that this discussion includes all agencies, other than family relations, which deal with the care, support, and education of defective, delinquent, and handicapped persons, as well as relief. The area of this inquiry embraces not only the so-called relief agencies, but also institutions for the care of the insane, the feeble-minded, the blind, the crippled, the delinquent, and the dependent, whether minors or adults. In the gradual evolution of society, some of these classes have come to be regarded as wards of the community, and the major part of the care is given in institutions supported, largely or wholly, by taxation. When this evolutionary process has advanced thus far, it is clear that, in the theory of legislation at least, the matter has passed from the realm of charity to that of justice; or, in other words, that the care which is bestowed upon those who are thus dependent and who are helped by the proceeds of taxation is bestowed, not as a charity, but as a right. For it is evident that, if an individual has come within the provisions prescribed by law to entitle him to a share in the benefits of the particular institution, the question is no longer one of voluntary aid, but of legal right. Now it is this evolutionary process that has led, in a blind way, to the existing confusion of thought on the part of many persons as to the essentials of justice as distinguished from those of charity. There is, however, a very serious moral effect arising from this confusion of thought. For the feeling on the part of any individual that support, wholly or in part, is a right due him, either from the state or from an institution, has the direct effect of sapping his independence and of destroying the initiative for self-support. Something of the same process which has come to be known as the institutionalizing of children, when they are inmates of a children's home, goes on in the case of numbers of people who receive support, in whole or in part, through public or semipublic channels. They become, if not institutionalized, at least pauperized, and this in spite of the fact that the distinct aim of the relief agency may be to prevent pauperization. This prevention of the pauperizing of the community, or a section of the community, is the avowed aim of organized charity; but it is to be feared that too often the end sought is defeated quite as much by the system, with its machinery of investigation and relief, as by the unworthiness of the objects of relief.

In order to reach efficiency in the con-

duct of any business, whether it be for private profit or for the general welfare, it is usually necessary to departmentalize the business; and the effect of the process is similar to that which marks the distinction between machine-made and hand-made articles. The more perfect the machinery, the more close and complete the working so as to unite each part into a finished whole, the more certain it is that the ultimate result will be disassociated from individuality, and, when the articles turned out are human beings, the result is most unfortunate. When a father supports his boy at home, or pays for his higher education at academy or college, there is no suggestion of the boy being pauperized, however much he may be spoiled. The relation between the two individuals is so close and, in many cases, so affectionate that the support of one by the other is thought of by neither as an alms given or received; but when a number of boys are maintained in a charity school, not only is the family relation done away with, but the regulative power exercised by the authorities of the school and the submissive attitude to which the inmates are constrained alike tend to destroy any personal ties of affection between the two classes, while the entire outside public occupy toward both the directors and the inmates of the school a critical position, which has the effect indicated by Dickens in his description of Noah Claypole. If, instead of children, we take the case of the insane or the delinquent, we find something of the same tendency. When the care afforded to such persons is that of a loving parent or relative, the tendency to any form of undue restraint or to brutality is minimized, but when the care is relegated to a group of changing officials and is so systematized as to give the just amount of control with the smallest expenditure of paid labor, the restraints are effaced, and only by the interposition of numerous safeguards in the way of inspection, and by careful selection of well-paid, and not overworked, custodians, can the safety of the wards be conserved. When the question is that of poor relief,—or the relief of the needy in their homes,—similar conditions become manifest, and the efforts of the charity organization societies are largely directed to securing a proper system of visiting; yet here the fact that the visiting is done for the purpose of inspection, to guard against imposition and to help by advice, itself militates against the visitor. If I go to see my friend, who is sick, because he is my friend, and carry with me some little dainty, there is no suggestion of benefit or patronage; but if I go, no matter how well intentioned I am, to see that what is given is wisely and properly used, the very purpose of the visit tends to destroy the friendly relation. In all of these cases the effect, unintended and undesired though it be, is to remove the object of aid from the giver of aid. Put in other words, the process is, in reality, that of turning charity from love, in its highest and broadest manifestation, to alms, bestowed gratuitously on persons in need; and the price is a very high one to pay, for, after all, the distinction between these two definitions of charity is that the first alone possesses the character of mercy and,—

> The quality of mercy is not strain'd;
> It droppeth, as the gentle rain from heaven
> Upon the place beneath: it is twice bless'd;
> It blesseth him that gives, and him that takes.

If, then, the price paid for system is too high a price, what shall be the remedy?

Certainly the remedy is not in abandoning all system, but in educating public opinion so that gradually the area of justice is enlarged, and the community as a whole recognizes its obligation to need. How this comes to pass is illustrated perhaps as well by the care of the sick in hospitals as in any way. The support of hospitals, both from public funds and by private gift, has greatly increased, and interest in their maintenance has, at least measurably, kept pace with their development on the medical side; while more and more the care of the sick in hospitals is seen to involve no stigma, and the brand of charity, originally connected with this species of relief, is passing away. In this process, at least two elements are observable: First, the attitude of the medical profession, where a large contribution of service without pay is made,

and where the opportunity to serve is deemed a coveted honor; and, in the second place, the realization on the part of the community that the care of individuals who are sick is a service, not alone to the ones so cared for, but to the whole community; for it is perceived to-day that proper care of the sick is directly and intimately related to the prevention of disease.

Now what has occurred to a certain extent in this area of relief ought to occur in other fields. It is coming to pass gradually with regard to physical handicaps such as blindness, deformity, and similar physical infirmities, which are seen to be of the same character as disease, as far as the economic question is concerned; and as the relation between relief and prevention is more closely studied the obligation of the community is becoming more generally discerned.

It is, however, in the area where personal shortcomings, both temperamental and moral, have tended to create the need, that the chief difficulty lies. Poverty is so commonly supposed to be the result of personal deficiency, that those who are suffering from the results of poverty are very often treated as though they were socially, if not morally, inferior; whereas as a matter of fact the chief causes of extreme poverty are to be found in the inequalities and iniquities of our economic and social system. This is neither the time nor place to enter upon a discussion of the causes of poverty; but it may be observed that, as usual, the weight of the burden falls chiefly on the shoulders of those least able to bear it, the old and the extremely young, and women even more than men. Now, when we reflect that in a righteous state these are the persons to whom protection should chiefly be afforded, and that, in moments of inspired and heroic vision, we recognize this principle,—as for instance in the case of a sinking vessel where women and children are the first to be saved,—it is clear that the burden of poverty is unjustly placed, and that the first duty of those who would truly serve the community is to change the attitude of men and women as to wealth and poverty.

Goldsmith's famous lines—

> Ill fares the land, to hastening ills a prey,
> Where wealth accumulates, and men decay,

—have a very real significance, for where poverty is despised because it is poverty, and wealth honored because it is wealth, the moral values have been lost, and social disease is apparent. The remedy lies, not only in recasting our economic system, as far as that is possible and desirable, but also in changing the point of view of the public as to the method of estimating men. As a matter of fact no intelligent man to-day would defend the fabulous exploits of Robin Hood, who robbed the rich and befriended the poor, but not a few supposedly intelligent men are eager to enter the lists in defense of certain captains of industry who rob the poor and befriend the rich. Neither riches nor poverty should of themselves induce respect or contempt; and as long as they are made, in popular estimation, the bases of judging men, false judgments and class distinctions will ensue.

If relief, either to special classes or to individual cases of poor relief, is ever to be conducted on a large scale, it must be systematized, but it must be freed from the mechanical forms which system tends to assume, and this is only possible as we come to realize that it is not a dole, but a right; that to serve the needy is an honorable profession; that acts of relief must either be the overflowing voluntary contribution of love or the ordered ministry of justice; that love and justice are only supreme when they are one; that society as a whole owes a duty to every claim of need which only justice can pay, unless an individual from the sacrificial outflowing of love assumes the discharge of society's debt.

The pitiful parings of plentiful incomes thrown as alms to the needy are not charity, and they are not justice; they are vulgar insults to God and man, and stumblingblocks in the path of progress.

Monray Williams

Charitable Bequests

BY WILLIS A. ESTRICH

Of the Ohio Bar

IF ONE were judging alone from the reports of the cases dealing with charitable trusts, he might readily come to the conclusion that the living are not so charitably inclined as are the dead. For the books are filled with the reports of cases in which heirs who failed to come into the inheritance which they expectantly awaited, because the ancestor decided to give his fortune to charity, have attacked the charitable disposition which deprived them of what they fondly believed was to be theirs. Moreover, the books show that many of these attempts have succeeded. It therefore behooves one who determines upon giving his fortune to charity to look well to the form used to effect that intention if he would be reasonably sure that it will not finally be defeated.

A most fertile source of attack is that the charity is not definite and certain. The certainty that must mark a gift for a charitable use has been the subject of investigation in many cases. It is a general theory that to sustain a charitable use there must be a definite charitable object indicated, or a class of charitable objects designated from which choice is authorized to be made.[1] A gift to a charitable use, to be valid, must designate the particular charitable use by making the gift to some charitable corporation whose charter provides for a charitable use of its funds, or to some particular object or purpose that the law recognizes as charitable, and while it is enough if the object be mentioned and the law can see that it is a charitable one, it is not enough that the gift be merely to charitable uses or to be used in charity so long as no selection is made from the long list of recognized charitable objects.[2] A gift for public purposes generally, not confined to a specified locality, is void as being so general and indefinite that it cannot be executed by the court.[3] A gift in which no specific purpose is pointed out and the words "charity" and "charitable" or synonymous words are not used, so that the trust may be completely executed without bestowing any part of the money upon purposes strictly charitable, cannot be said to be a gift for charitable purposes.[4]

A gift by the testator of his residuary estate to his executors in trust to sell and after paying necessary expenses to pay the proceeds of the sale to "the trustees of the Theosophical Society at Adyar, Madras, India, or wherever the said Theosophical Society may be located, appointed or acting under a deed of trust dated the 14th day of December, A. D. 1892, and duly enrolled," and stating: "It is my express will that the said legacy to the said Theosophical Society in India be used for the purpose, as far as possible, in obtaining translations into English of the ancient Hieratic Scriptures, believed to exist in India and elsewhere for the use of the Theosophical Society and its branches all over the world,"—was held invalid on the ground that the trustees could not be identified, and also that the purpose was uncertain, and that there was a perpetuity, the court stating that "the defendants are required to convert the whole residue of

[1] Spalding v. St. Joseph's Industrial School, 107 Ky. 382, 54 S. W. 200.

[2] Bristol v. Bristol, 53 Conn. 242, 5 Atl. 687.

[3] Re Allen, [1905] 2 Ch. 400, 74 L. J. Ch. N. S. 593, 54 Week. Rep. 91, 21 Times L. R. 662, 93 L. T. N. S. 597.

[4] Morice v. Durham, 9 Ves. Jr. 401, 32 Eng. Reprint, 656, affirmed in 10 Ves. Jr. 522, 32 Eng. Reprint, 947, 7 Revised Rep. 232, 5 Eng. Rul. Cas. 548.

the estate into money, the money is bequeathed in trust to an official board, the members of which are designated in an enrolled deed of trust which cannot be identified with certainty, for a use which cannot be defined with certainty, and for the benefit of a *cestui que trust* which was merely an aggregation of people in all parts of the world, and not an organized entity, and there is no prescribed limitation of time within which the trust is to be executed or the fund expended." [5]

It is not essential, however, that a specific charity be named. For example, it has been held that a grantor's devise for a charitable use to a donee capable of executing the trust vested in him should be upheld if the beneficiary or charitable object is stated in such a manner or of such distinctness that chancery can ascertain what it is, so as to enforce the trust.[6] And a devise of real and personal property generally, without stating the purposes, to a corporation created and existing for particular purposes alone, must be regarded as a devise for such particular purposes.[7] And it has been held that if a trustee is appointed by a testator, and the will shows that the object of the devise, though expressed in general terms, is for a charitable use, the trust will be upheld, and in such case the duty devolves upon the trustee of devising a scheme for carrying the trust into effect.[8]

A particular parish may be the subject of the gift. Thus, it has been held that a bequest of personalty for such charities and other public purposes as lawfully might be in a named parish, which was the testator's own parish, is a good charitable gift which must be carried into execution.[9] A gift for public purposes in a specified locality is a valid charitable trust.[10] And a will giving a legacy to a named parish without saying to what use it should be devoted has been sustained, and the legacy disposed of for the benefit of the poor of the parish.[11]

The trustee may be given a certain discretion as to the subject of the charity. It is a rule supported by many of the cases that a charitable gift comprehending a charity only is limited to the charity, but within that limit the bequest may lawfully confer unlimited discretion upon the trustees.[12] A charitable gift has been held not void for indefiniteness where the general purpose of the bequest may be effectuated by judicial decree, and the trustees are vested with a continuing discretion as to the selection of the particular objects of the testator's bounty.[13]

The rule is well supported, however, that in making a selection the trustee must be limited to some particular charity or to some particular locality, a mere limitation to charities generally or to a charitable use is too broad.[14] Thus, a bequest to an executor or trustee of a sum of money to apply in charity according to his best discretion is wholly incapable of enforcement on account of vagueness and uncertainty.[15] Such a direction by a testator to his trustees constitutes giving someone else power to make the will for him, instead of making a will for himself, and the direction is void for uncertainty.[16] So a direc-

[5] Korsstrom v. Barnes, 167 Fed. 216.

[6] Russell v. Allen, 5 Dill. 235, Fed. Cas. No. 12,149.

[7] Santa Clara Female Academy v. Sullivan, 116 Ill. 375, 56 Am. St. Rep. 776, 6 N. E. 183.

[8] Dye v. Beaver Creek Church, 48 S. C. 444, 59 Am. St. Rep. 724, 26 S. E. 717.

[9] Dolan v. Macdermot, L. R. 5 Eq. 60.

[10] Re Allen, supra.

[11] West v. Knight, 1 Ch. Cas. 174, 22 Eng. Reprint, 729.

[12] Note in 14 L.R.A.(N.S.) 85. Rotch v. Emerson, 105 Mass. 431; John v. Smith, 91 Fed. 827.

[13] Haynes v. Carr, 70 N. H. 463, 49 Atl. 638; St. James Orphan Asylum v. Shelby, 60 Neb. 796, 83 Am. St. Rep. 553, 84 N. W. 273; Re Douglas, L. R. 35 Ch. Div. 472, 56 L. J. Ch. N. S. 913, 56 L. T. N. S. 786, 35 Week. Rep. 740.

[14] Note in 14 L.R.A.(N.S.) 86.

[15] Schmucker v. Reel, 61 Mo. 592; Coleman v. O'Leary, 114 Ky. 388, 70 S. W. 1068; Grimond v. Grimond [1905] A. C. 124, 74 L. J. P. C. N. S. 35, 92 L. T. N. S. 477, 21 Times L. R. 323; Morice v. Durham, supra; Harris v. Du Pasquier, 26 L. T. N. S. 689, 20 Week. Rep. 688; Yeap Cheah Neo v. Ong Cheng Neo, L. R. 6 C. P. 381.

[16] Grimond v. Grimond [1905] A. C. 124, 74 L. J. P. C. N. S. 35, 92 L. T. N. S. 477, 21 Times L. R. 323.

[17] Williams v. Kershaw, 5 Clark & F. 111, 7 Eng. Reprint, 346.

tion by a testator to his trustees to apply the residue of his estate to such benevolent, charitable, or religious purposes as they in their discretion shall think most advantageous and beneficial, and for no other use, intent, or purpose, is intended to restrain the discretion of the trustees only within the limits of what is benevolent or charitable or religious, and the bequest is void for uncertainty.[17] But testamentary provisions have been upheld as charitable bequests where the residue of the estate was given to trustees to distribute "among such charitable institutions, persons, or objects, in such amount, upon such terms, and for such purposes as they decide to be most worthy, having regard, but in their sole discretion to such as I have been interested in during my life."[18] And where the will created a special trust, mentioning the name by which the fund was to be designated, and authorized the trustees to devote the unexpended income to such charitable purposes as they and their successors "judge will do the most real good, giving preference to several objects instead of a few," the trust has been upheld.[19] So a trust has been upheld where, in default of written direction, the trustees were to distribute the residue of the estate "among such religious, charitable, and benevolent purposes and objects or institutions as in their discretion shall be best and proper," there being an expression of confidence in their ability and integrity and a release of any liability on their part to account for the fund.[20] And also a trust has been upheld where the trustees were empowered to divide the residue "among such local or Scottish charitable institutions and schemes already constituted or which may hereafter be constituted (and which may include these hereinbefore named) [to which specific legacies had been given] as they may select or any one or more of such institutions and schemes, and that at such time and such manner or in such proportions all as they in their absolute discretion may deem proper."[21]

Heretofore we have been discussing the certainty which must mark a gift for charity. Another point upon which charitable trusts have met with frequent attack is that the beneficiary is not a charity. The character of objects which have been sustained as charitable has taken a wide range. A bequest for religious purposes is a good charitable bequest.[22] This is so although the paramount religious object might possibly be affected by an application of part of the fund to a purpose which, taken separately, would not be strictly charitable.[23] A bequest for religious purposes may take the form of aid to particular churches or denominations; such a bequest or devise to trustees in trust for the purpose and use of religious worship according to the forms of the particular denomination is not invalid for indefiniteness,[24] nor is such a devise condemned by public policy.[25] A bequest for the education of young students for the ministry of a congregation or denomination is good as a charity,[26] as is also a gift for the erection, maintenance, and repair of church edifices for the promotion of worship, etc.[27]

All gifts for the promotion of education are charitable gifts in the legal sense.[28] Thus, a gift to promote the efficiency of public schools or in the alternative to establish schools for the education of children residing in tenements is one to a charitable use.[29] A gift to found an institution for the education of the youth in a named city is a gift for a charitable use.[30] Likewise, a bequest of a sum of money to constitute

[18] Gill v. Atty. Gen. 197 Mass. 232, 83 N. E. 676.

[19] Selleck v. Thompson, 28 R. I. 350, 67 Atl. 425.

[20] Dulles's Estate, 218 Pa. 162, 67 Atl. 49, 12 L.R.A.(N.S.) 1177.

[21] Dick v. Audsley [1908] A. C. 347, 77 L. J. P. C. N. S. 127 [1908] S. C. 27, 45 Scot. L. R. 683.

[22] Note in 14 L.R.A.(N.S.) 92.

[23] Townsend v. Carus, 3 Hare, 257, 67 Eng. Reprint, 378, 13 L. J. Ch. N. S. 169, 8 Jur. 104.

[24] Note in 14 L.R.A.(N.S.) 93.

[25] Andrews v. Andrews, 110 Ill. 223.

[26] Note in 14 L.R.A.(N.S.) 94.

[27] Note in 14 L.R.A.(N.S.) 95.

[28] Note in 14 L.R.A.(N.S.) 97.

[29] Webster v. Wiggin, 19 R. I. 73, 31 Atl. 824, 28 L.R.A. 510.

[30] Russell v. Allen, 107 U. S. 163, 27 L. ed. 397, 2 Sup. Ct. Rep. 327.

a permanent fund, the yearly income of which shall be applied to the increase of salaries of teachers in a school, is a bequest for a charitable use within the meaning of the statute prohibiting such bequest unless made by deed or will at least one calendar month before the decease of the testator or alienor.[31] And it has been held that a gift for the benefit, advancement, and propagation of education in every part of the world is not too indefinite to be good as a charitable bequest.[32] Such a bequest is not rendered invalid by the circumstance that it would be difficult to carry it into execution in another part of the world.

Education along certain special lines has also been held a proper subject of charity. A bequest to a named agricultural society, to be applied toward the erection and support of an agricultural college within the state, is a good charitable bequest.[33] A bequest of the surplus to be used to establish a school at a named place for the education of young persons in the domestic and useful arts is for a charitable purpose, and is sufficiently definite and certain to be carried into execution, and is therefore valid.[34] A trust for an education in Socialism has been sustained. Peth v. Spear,[35] where land was conveyed in trust for the benefit of the "membership now existing and hereafter to exist of the brotherhood of the Co-operative Commonwealth," which was described as an "unincorporated association or body of persons acting together for the purpose of owning, acquiring, operating, conducting, and maintaining a communal industrial institution, and the education of the people in the principles of socialism." The court states that "since the purpose of its donor was to provide a place where the doctrines of socialism could be taught by example as well as by precept, the trust can be said to belong to that species of charitable trusts known as educational, as such it is among the objects enumerated as charitable by statute, 43 Eliz. chap. 4, and within practically all the definitions of a charitable use as announced by the authorities. . . . Nor is the trust rendered invalid by the fact that the beneficiaries of the trust are an indefinite number of persons or of an uncertain body or class; indeed, these requisites are essential to a charitable trust."

Many other things have been held to be charities, such as the relief of the poor,[36] matters of municipal, governmental, and public interest,[37] and relief of sickness.[38] It thus appears that charitably inclined individuals have a wide range of objects from which to select a recipient of their bounty; it is only necessary that their intention be put in proper legal form.

Willis A. Estrich

[31] Price v. Maxwell, 28 Pa. 23.
[32] Whicker v. Hume, 14 Beav. 509, 51 Eng. Reprint, 141, 1 De. G. M. & G. 506, 42 Eng. Reprint, 649, 21 L. J. Ch. N. S. 406, 16 Jur. 391.
[33] Cresson's Appeal, 30 Pa. 437.
[34] Webster v. Morris, 66 Wis. 366, 57 Am. Rep. 278, 28 N. W. 353.
[35] 63 Wash. 291, 115 Pac. 164.
[36] Note in 14 L.R.A.(N.S.) 100.
[37] Note in 14 L.R.A.(N.S.) 103.
[38] Note in 37 L.R.A.(N.S.) 1008.

Extrinsic Evidence to Identify Charitable Society Designated in Devise or Legacy

BY A. G. SHEPARD

DEVISES and bequests to charitable societies are frequently defective for failure accurately or definitely to describe the charitable society which the testator has undertaken to make one of his beneficiaries. As a rule the courts have shown commendable liberality in sustaining devises and bequests of this character, and in permitting extrinsic proof to aid in determining the society actually intended by the testator to be the beneficiary of a devise or legacy. The rule has been very generally adopted that whenever there exists, either from the language of the will or from the proof of extrinsic facts, any ambiguity or uncertainty as to the society entitled to a devise or legacy which cannot be made clear from the will construed as a whole, recourse may be had to extrinsic facts to identify the society intended.[1] Whatever conflict or confusion exists among the decisions upon this question relates to the application of this general rule to the specific case, and not to the rule itself. In this regard the courts have sometimes attempted to work out a general test to determine when extrinsic evidence may be resorted to, and have held that the admissibility of extrinsic evidence depends upon the nature of the ambiguity in the devise or legacy. If the ambiguity is latent, extrinsic proof may be resorted to, but not where it is patent. This test is an attempt to apply the familiar rule that a latent ambiguity is disclosed by extrinsic evidence, and hence it may be removed by evidence of the same character. A patent ambiguity, however, is disclosed by the terms of the will, and it has been held that it raises a question of construction as to which the will must speak for itself, and that no aid can be had by recourse to extrinsic proof, even though the will as a whole leaves in doubt the beneficiary intended.

Character of Ambiguity as Test of Admissibility of Extrinsic Proof.

Making the character of the ambiguity a test as to the right to have recourse to extrinsic proof to aid in determining the charitable society intended in a de-

[1] Gilmer v. Stone, 120 U. S. 586, 30 L. ed. 734, 7 Sup. Ct. Rep. 689; Eccles v. Rhode Island Hospital Trust Co. — Conn. —, 98 Atl. 129; Beardsley v. American Home Missionary Soc. 45 Conn. 327; Brewster v. McCall, 15 Conn. 274; Hitchcock v. Board of Home Missions, 259 Ill. 288, 102 N. E. 741, Ann. Cas. 1915B, 1; Woman's Union Missionary Soc. v. Mead, 131 Ill. 361, 23 N. E. 603; Goodwin v. New Church Bd. of Publication, 160 Ill. App. 483; Missionary Soc. v. Cadwell, 69 Ill. App. 280; Hall v. Grand Lodge, I. O. O. F. 55 Ind. App. 324, 103 N. E. 854; Chappell v. Missionary Soc. 3 Ind. App. 356, 50 Am. St. Rep. 276, 29 N. E. 924; Carroll v. Cave Hill Cemetery Co. 172 Ky. 204, 189 S. W. 186; Preachers' Aid Soc. v. Rich, 45 Me. 552; Faulkner v. National Sailors' Home, 155 Mass. 458, 29 N. E. 645; Bodman v. American Tract Soc. 9 Allen, 447; Gilchrist v. Corliss, 155 Mich. 126, 130 Am. St. Rep. 568, 118 N. W. 938; Cook v. Universalist General Convention, 138 Mich. 157, 101 N. W. 217; Coyne v. Davis, 98 Neb. 763, 154 N. W. 547; Second United Presby. Church v. First United Presby. Church, 71 Neb. 563, 99 N. W. 252; Peaslee v. Rounds, 77 N. H. 544, 94 Atl. 262; Smith v. Kimball, 62 N. H. 606; Tilton v. American Bible Soc. 60 N. H. 377, 49 Am. Rep. 321; South Newmarket Methodist Seminary v. Peaslee, 15 N. H. 317; German Pioneer Verein v. Meyer, 70 N. J. Eq. 192, 63 Atl. 835, affirmed in 72 N. J. Eq. 954, 67 Atl. 73; Van Nostrand v. Domestic Missions, 59 N. J. Eq. 19, 44 Atl. 472; Moore v. Moore, 50 N. J. Eq. 554, 25 Atl. 403; Bowman v. Domestic & F. Missionary Soc. 182 N. Y. 494, 75 N. E. 535; Lefevre v. Lefevre, 59 N. Y. 434; Re

vise or legacy, is not a satisfactory way to dispose of the matter, for the test is misleading and frequently inapplicable. It overlooks the distinction between an attempt to show the intention of the testator by extrinsic proof in contradiction of the intention expressed in the will itself, and a recourse to extrinsic proof for the purpose of carrying out the defectively or indefinitely expressed intention of the testator. In this regard it is of course to be recognized that every devise or legacy to a beneficiary by description necessarily involves an inquiry into extrinsic facts in order to enable the court to apply the description to the individual, and generally this is made necessary because of an ambiguity appearing upon the face of the will; in other words, a patent ambiguity, as for example, a devise to a designated person and his family.

In this connection it is to be borne in mind that there is no rule of law applicable to devises or bequests which requires that the name of the beneficiary shall be specifically designated, but it is sufficient in this regard if the devise is by descriptive words sufficient to indicate the beneficiary intended by the testator, and to distinguish him from all others, although the intention of the testator in this regard can be ascertained only by reference to the language of the devise or bequest construed in connection with extrinsic evidence. Of course where the beneficiary is thus referred to, the ambiguity is patent.[2]

Admissibility of Extrinsic Evidence to Disclose Society Inaccurately or Indefinitely Designated or Described.

A bequest or devise will not fail because of a mere inaccuracy in the description of the beneficiary, where the meaning of the testator can be gathered with reasonable certainty from the instrument itself, or where the identity of the object of his bounty can be shown by extrinsic evidence. And such evidence is always admissible for the purpose of identifying the beneficiary, where there is uncertainty or ambiguity in the description or name.[3] For example a charitable society may be designated by its corporate name, by the name by which it is usually called and known, by the name by which it was known to and called by the testator, or by any name or description by which it can be distinguished from every other corporation, and when any but the corporate name is used, any circumstance which will enable the court to apply the name or description to a particular corporation, identify it as the society intended, distinguish it from all others, and bring it within the terms of the will, may be proved by parol.[4] According to the doctrine enunciated in this regard by the Federal Supreme Court,[5] extrinsic evidence is always competent to place the court in the situation of the testator at the time he executed the will, and thus bring the words employed by him in contact with the circumstances at-

Pearson, 52 Misc. 273, 102 N. Y. Supp. 965, affirmed in 124 App. Div. 929, 109 N. Y. Supp. 1127; Re Wheeler, 32 App. Div. 183, 52 N. Y. Supp. 943; Fund of Episcopate v. Colegrove, 6 Thomp. & C. 614; Leonard v. Davenport, 58 How. Pr. 384; McLeod v. Jones, 159 N. C. 74, 74 S. E. 733; Tilley v. Ellis, 119 N. C. 233, 26 S. E. 29; Amberson's Estate, 204 Pa. 397, 54 Atl. 484; Domestic & F. Missionary Society's Appeal, 30 Pa. 425; Wampole's Estate, 3 Pa. Super. Ct. 414; Wood v. Hammond, 16 R. I. 98, 17 Atl. 324, 18 Atl. 198; Button v. American Tract Soc. 23 Vt. 336; Roy v. Rowzie, 25 Gratt. 599; Maund v. M'Phail, 10 Leigh, 199; Reformed Presby. Church v. McMillan, 31 Wash. 643, 72 Pac. 502; Osenton v. Elliott, 73 W. Va. 519, 81 S. E. 837; Cornwell v. Mt. Morris M. E. Church, 73 W. Va. 96, 80 S. E. 148; Ross v. Kiger, 42 W. Va. 402, 26 S. E. 193; Wilson v. Perry, 29 W. Va. 169, 1 S. E. 302; Re Paulson, 127 Wis. 612, 5 L.R.A.(N.S.) 804, 107 N. W. 484, 7 Ann. Cas. 652; Webster v. Morris, 66 Wis. 366, 57 Am. Rep. 278, 28 N. W. 353; Brown v. Langley, 2 Barnard, K. B. 118, 94 Eng. Reprint, 394; Re Vaughan, 17 Times L. R. 278; British Home & Hospital v. Royal Hospital, 90 L. T. N. S. 601; Re Smith, 22 Manitoba L. R. 756, 8 D. L. R. 93; Van Wart v. Fredericton, 42 N. B. 1, 5 D. L. R. 776. And see note appended to Siegley v. Simpson, 47 L.R.A.(N.S.) 915.

[2] Brewster v. McCall, 15 Conn. 274.

[3] McDonald v. Shaw, 81 Ark. 235, 98 S. W. 952.

[4] Lefevre v. Lefevre, 59 N. Y. 434; Holloway v. Institute of Mission Helpers, 119 Md. 667, 87 Atl. 269.

[5] Gilmer v. Stone, 120 U. S. 586, 30 L. ed. 734, 7 Sup. Ct. Rep. 689.

tending the execution, thereby enabling the court to avail itself of the light which the circumstances in which the testator was placed at the time he made the will throw upon his intention. The court has a right to ascertain all the facts known to the testator at the time he made his will as an aid in construing the language used, in order to determine whether there exists a society or corporation to which the description given in the will can be reasonably and with sufficient certainty applied.[6]

Where More Than One Society Bears Name of Beneficiary.

Whenever it appears that there are two societies bearing the same corporate name as that designated in a devise or bequest, a latent ambiguity is raised as to the beneficiary intended, which is to be made clear by extrinsic proof. This proof, however, does not vary or contradict the language of the bequest or devise, but merely enables the court to ascertain the particular society the testator referred to and undertook to designate, and for this purpose oral evidence is admissible to show which society was known to the testator or which he had in mind when he inserted the name in his will.[7] In this regard it has been held that generally it is only where the designation of the society in a bequest is applicable with equal certainty to several, that extrinsic evidence is admissible for the purpose of establishing the beneficiary intended. As herein shown, however, the rule is applicable to many other situations than this particular one. But it is the rule that the language of the devise or bequest must be such as to render it a matter of necessity to have recourse to extrinsic evidence to determine the society intended, and where such necessity does not exist, the evidence is inadmissible.[8]

When No Society Answers to Name or Description of Beneficiary.

A more complicated question arises where the devise or bequest does not accurately describe any society, and different societies claim to be the one actually intended by the testator. Even in such a case, however, parol evidence is competent to aid in determining the intention of the testator.[9] So, where the description is not strictly applicable to any society, but is partly applicable to one and partly to another, resort may be had to extrinsic facts to show which was intended.[10] Also, where a devise or bequest is expressed in terms which apply indifferently to two or more societies,[11] or there are several institutions having a name approximately that used by the testator,[12] or there are societies known by the name used by the testator, but this is not their legal name.[13] Where there is no society bearing the name designated in a devise, but there are several whose object and character are accurately described therein, if the words are regarded as descriptive, and there is nothing in the will to show the testator intended to designate any particular society by name, extrinsic proof is admissible to show the society intended.[14] And extrinsic evidence is also admissible where there are several societies pursuing the same object as that of the society mentioned in a devise.[15] Also to show that the name applied to a society was a popular and usual name by which it was designated and known, and that the testator knew and called it by that name.[16]

[6] Wilson v. Squire, 1 Younge & C. Ch. Cas. 654, 62 Eng. Reprint, 1058; Charter v. Charter, L. R. 7 H. L. 377, 43 L. J. Prob. N. S. 73.

[7] Gilmer v. Stone, 120 U. S. 586, 30 L. ed. 734, 7 Sup. Ct. Rep. 689; Bodman v. American Tract Soc. 9 Allen, 447; Tilton v. American Bible Soc. 60 N. H. 377, 49 Am. Rep. 321; St. Luke's Home v. Association for Indigent Females, 52 N. Y. 191, 11 Am. Rep. 697.

[8] Dunham v. Averill, 45 Conn. 61, 29 Am. Rep. 648.

[9] Leonard v. Davenport, 58 How. Pr. 384.

[10] Bernasconi v. Atkinson, 10 Hare, 345, 17 Jur. 128, 1 Week. Rep. 152.

[11] Wood v. Hammond, 16 R. I. 98, 17 Atl. 324, 18 Atl. 198.

[12] Re Pearson, 124 App. Div. 929, 109 N. Y. Supp. 1127.

[13] Tilley v. Ellis, 119 N. C. 233, 26 S. E. 29; Van Nostrand v. Domestic Missions, 59 N. J. Eq. 19, 44 Atl. 472; Webster v. Morris, 66 Wis. 366, 57 Am. Rep. 278, 28 N. W. 353.

[14] Brewster v. McCall, 15 Conn. 274.

[15] Brewster v. McCall, 15 Conn. 274; Ayres v. Weed, 16 Conn. 291; Bristol v. Ontario Orphan Asylum, 60 Conn. 472, 22 Atl. 848.

[16] Lefevre v. Lefevre, 59 N. Y. 434.

For a devise to a society by the name by which it is known to the testator is valid although known to others by a different name.[17] And a society is entitled to a bequest given under a nickname by which the testator habitually designated it, and it may establish this fact by extrinsic evidence in order to prove its right to the legacy.[18] For example, a bequest to "the nursery" may be shown to have been intended for a society known as "St. Mary's Orphanage," which the testator generally referred to as "the nursery" in making contributions thereto during his lifetime.[19] So, where the name or designation used in a devise or legacy does not designate with precision any corporation, but, the circumstances as shown by extrinsic proof concur to indicate that a particular corporation is intended and no similar conclusive circumstances appear to distinguish and identify any other, the society thus shown to be intended will take as beneficiary.[20]

Where Beneficiary Is Described by Name and Description.

Frequently a devisee or legatee is referred to both by name and description, and the name indicates one society and the description another. In such case it becomes a matter of importance to determine whether the name or the description is to be given the greater effect in determining the society intended by the testator, when considered in connection with extrinsic evidence relating to the surrounding facts and circumstances. As a rule, a designation of a devisee or legatee by name is entitled to more weight than any matter of description. For example, a bequest to the "Royal Home for Incurables, Streatham, S. W.," was held to be intended for the "Royal Hospital for Incurables," although it was not located at the place mentioned and there was a society located at this place going by the name of the "British Hospital for Incurables."[21]

Admissibility of Extrinsic Proof Where the Will Does Not Disclose Testator's Intention.

It is the aim of the courts so to construe a will as to give effect to and carry out the intention of the testator as to his beneficiaries. But his intention in this regard must in some way be manifest in the will itself. It cannot be gathered wholly from extrinsic evidence. For example, parol evidence to identify the association intended by an indefinite designation in the legacy is not admissible where there does not appear upon the face of the will sufficient indication of the intention of the testator as to the society intended to enable the court intelligently to use the description or designation in connection with extrinsic proof and thereby determine the society intended.[22]

Admissibility of Extrinsic Proof to Contradict Terms of Will.

The cases heretofore referred to sustain the admissibility of extrinsic proof for the purpose of ascertaining or carrying out the defectively or indefinitely expressed intention of the testator, by identifying the particular society intended in a devise or bequest. They do not sustain the right to prove that the testator intended as the beneficiary a society not fairly coming within the description or designation of the devise or bequest, nor do they sustain the admissibility of extrinsic proof to establish a mistake on the part of the testator in describing or designating a society, where there is in existence a society which comes within the designation of the devise or bequest. The highest and best evidence is always to be sought for, and when the intention of the testator is expressed in writing under testamentary safeguards, the court will regard it as revealing such intention with more accuracy than would any parol declarations which extrinsic evidence can substitute for it.[23] For example,

[17] Tilton v. American Bible Soc. 60 N. H. 377, 49 Am. Rep. 321.

[18] Beatty v. Cory Universalist Soc. 39 N. J. Eq. 452.

[19] Wood v. Hammond, 16 R. I. 98, 17 Atl. 324, 18 Atl. 198.

[20] Tucker v. Seaman's Aid Soc. 7 Met. 188.

[21] British Home & Hospital v. Royal Hospital, 90 L. T. N. S. 601.

[22] Fairfield v. Lawson, 50 Conn. 501, 47 Am. Rep. 669.

[23] Dunham v. Averill, 45 Conn. 61, 29 Am. Rep. 644; Carroll v. Cave Hill Cemetery Co. 172 Ky. 204, 189 S. W. 186.

parol evidence is not admissible to contradict the plain expression in a will, by showing that, although the testator named one corporation, he did so by mistake, supposing he had given the correct name of another.[24] Nor to show that a bequest was not intended for a society clearly and distinctly designated, and that another society with the same aims and objects but with a different name was intended.[25] And the admission that the testator actually made a mistake in designating the corporation intended, and intended another corporation in the same neighborhood, will not render extrinsic evidence admissible to contradict the expressed intention of the testator.[26] And this general rule also applies where there exists a society bearing a name substantially similar to that designated by the testator, although there is a slight variance therefrom.[27]

Character of Evidence Admissible.

Whenever parol evidence is necessary to remove an ambiguity as to the beneficiary intended and enable the court to determine the intention of the testator in that regard, evidence is admissible as to any material fact relating to the societies claiming to be the beneficiary intended,[28] including evidence as to their corporate existence, the objects, and purposes of their organization, the knowledge the testator had of these matters, his feelings toward and relations to the societies, and the name or names by which he and others were accustomed to designate them.[29] And it may be shown that the testator was acquainted with the objects and operations of a particular society claiming as a beneficiary, and took a lively interest in it, and contributed to its funds in his lifetime.[30]

Evidence is also admissible as to the name given to a society in its charter, the name it used or recognized as its own, and the name or names by which it was known to others, to prove the name by which it might have been known to the testator, and by which he described the beneficiary in the legacy;[31] and it may be shown that the society was frequently referred to by the name used in the bequest,[32] and that it was popularly known and designated by the name used by the testator,[33] and that the testator was well acquainted with it and had contributed to it and expressed his intention to bequeath something to it;[34] and that he expressed his preference for it over other institutions,[35] and that he was accustomed to call it by the name used in the legacy.[36] And reference may be had to an account book kept by the testator in which were entered contributions to different charities for the purpose of ascertaining the particular societies mentioned in bequests which did not accurately designate any existing society.[37]

Evidence is likewise admissible not only of previous facts known to the testator, and of circumstances existing at the time he made his will, but also as to his declarations at this time as well as before and after making the will.[38] And also as to the declarations of the testator to show the sense in which he used the

[24] Board of Missions v. Scovell, 3 Dem. 516.
[25] Tucker v. Seaman's Aid Soc. 7 Met. 188.
[26] Dunham v. Averill, 45 Conn. 61, 29 Am. Rep. 644.
[27] Union Trust Co. v. St. Luke's Hospital, 74 App. Div. 330, 77 N. Y. Supp. 528, affirmed in 175 N. Y. 505, 67 N. E. 1090; Jeanes's Estate, 3 Pa. Dist. R. 314; Domestic & F. Missionary Soc. v. Reynolds, 9 Md. 341.
[28] Woman's Union Missionary Soc. v. Mead, 131 Ill. 361, 23 N. E. 603.
[29] Goodwin v. New Church Bd. of Publication, 160 Ill. App. 483.
[30] Bradley v. Rees, 113 Ill. 327, 55 Am. Rep. 422; Amberson's Estate, 204 Pa. 397, 54 Atl. 484; Button v. American Tract Soc. 23 Vt. 336; Re Smith, 22 Manitoba L. R. 756, 8 D. L. R. 93.
[31] Tilton v. American Bible Soc. 60 N. H. 377, 49 Am. Rep. 321.
[32] Re Smith, 22 Manitoba L. R. 756, 8 D. L. R. 93.
[33] Domestic & F. Missionary Society's Appeal, 30 Pa. 437.
[34] Re Smith, 22 Manitoba L. R. 756, 8 D. L. R. 93.
[35] Button v. American Tract Soc. 23 Vt. 336.
[36] Hinckley v. Thatcher, 139 Mass. 477, 52 Am. Rep. 719, 1 N. E. 840.
[37] British Home & Hospital v. Royal Hospital, 90 L. T. N. S. 601.
[38] Bradley v. Rees, 113 Ill. 327, 55 Am. Rep. 422; Goodwin v. New Church Bd. of Publication, 160 Ill. App. 483; Fund of Episcopate v. Colegrove, 6 Thomp. & C. 614; Board of Missions v. Scovell, 3 Dem. 516; McLeod v. Jones, 159 N. C. 74, 74 S. E. 733.

name of a certain place as the location of a society which he made a legatee in his will, in order to identify the society.[39] And evidence is admissible of statements of the testator to show the sense in which he habitually used certain words, even where the description is not equivocal, if the construction thus sought to be put upon them does not contravene the ordinary legitimate meaning.[40] But evidence is not admissible as to general declarations or wishes expressed by the testator with reference to the disposition of his property.[41] Nor as to statements of the testator as to the society intended in a bequest, in order to impose upon the will a meaning which, taking it as it naturally applies to facts and circumstances, it does not express, for this would be an effort to contravene the fundamental principles of the law that a will should be in writing.[42]

[39] Domestic & F. Missionary Society's Appeal, 30 Pa. 425.
[40] Van Nostrand v. Domestic Missions, 59 N. J. Eq. 19, 44 Atl. 472.
[41] Goodwin v. New Church Bd. of Publication, 160 Ill. App. 483.
[42] Wood v. Hammond, 16 R. I. 98, 17 Atl. 324, 18 Atl. 198.

Reason for the Rise and Growth of Legal Aid Societies

BY M. W. ACHESON, Jr.
of the Pittsburgh Bar

RIGINALLY, lawyers' fees were gifts out of the bounty of the client, presumably measured by the client's means. Although to-day, with us, a lawyer may sue for his compensation, the original idea persists, at least to this extent, that the bar is always supposed to aid gratuitously the poor man who has a just cause.

While this attitude on the part of the bar is probably regarded by the laity as theoretical, there are and always have been many instances of gratuitous legal aid, and many more of them than would be guessed by the public at large.

At all events, in this tradition of the bar lies the underlying reason for the rise and growth of Legal Aid Societies. Their aim is to have the right side of a controversy, to eschew the standpoint of the partisan and approach more nearly that of the impartial judge, and to render aid to those who appear worthy and have not the means to employ counsel.

In a word, the Legal Aid Society is the scientific expression of the theoretical attitude of all lawyers and the practical attitude of many,—not to charge the poor, and the society is enabled to live up to the ideal more efficiently than can the busy practitioner in the rush of his professional work.

There is a noteworthy trend in Legal Aid, I mean the free Municipal Legal Aid Bureau, which as a part of municipal relief work is becoming more and more the vogue. Once again, private philanthropy is blazing the way.

When America has better learned its lesson on the value of the expert and has installed the city manager with the small council or commission and thereby achieved efficient municipal government, it may be that we will find the cities taking over the functions now performed by the various Legal Aid Societies that are spreading over the country.

A Lawyers' Legal Aid Society

BY REGINALD HEBER SMITH

THE distinguishing characteristic of the Boston Legal Aid Society is that it is pre-eminently a lawyers' institution. Founded by lawyers seventeen years ago, guided and controlled by lawyers ever since, and steadily securing the major portion of its finances from lawyers, it may fairly be taken as an illustration of what a far-sighted, enterprising, and generous bar can do in bettering the condition of the poor before the law in any city. Only by appreciating the fact that lawyers have been the dominating influence throughout its history can the story of its growth, its present organization, its strong and weak points, be understood.

In April, 1900, a group of sixteen attorneys, all of whom were closely identified with the Bar Association, perceiving that the inability to employ counsel was resulting in widespread denial of justice among the poor, determined to establish an agency to which deserving persons in need of legal advice and assistance could turn. There were at this time three such organizations in the United States, one in New York City and two in Chicago. The founders naturally looked to the New York Legal Aid Society for guidance. With a trained instinct for following precedent, they patterned rather closely after their model and so avoided many of the pitfalls which embarrass the path of new undertakings.

They incorporated at once, thereby insuring a definite status and responsible leadership for their organization; they determined to pay a salary sufficient to secure the services of a proper attorney, thereby placing the work at once on a clean-cut, definite basis and avoiding the mirage of "volunteer" legal services; and they inserted in their legal title the words "legal aid," which have since become the standardized nomenclature, almost like a trademark, for this sort of organization throughout the country.

From a small beginning the work has grown slowly, but so surely that it has become axiomatic that "what the legal aid society gains it never loses." A concrete idea of the steady increase may be gained from the following condensed statistical table:

Year	New cases received	Collections for clients	Gross expense
1900	198	$585.74	$1,263.44
1904	664	5,917.44	1,500.00
1908	996	5,760.94	2,469.67
1912	1041	6,131.44	4,567.22
1916	2608	22,808.31	6,498.53

Side by side with the growth in the work there took place a steady development of ideas concerning the significance of legal aid work and the science of its organization and management. In these days of hostility to the bar because of its alleged ultraconservative attitude, it deserves to be recorded that the successive boards of directors, nearly all of whom were lawyers, worked along such progressive lines that to-day the Boston Legal Aid Society stands as one of the strong societies of the country, a pioneer along many new lines of development, and one of the leaders in spreading the fundamental principle of freedom and equality of justice.

These men would have denied that they were engaging in social service or charity. They considered that they were performing, in a practical and efficient way, their professional responsibility as agents of the court and ministers of justice. It has steadily been their belief that equality of justice meant that a person who could not pay a fee was as much entitled to honest and competent counsel as one who could. It was almost inevitable that their conception of how this could best be brought about involved no idea of a strange or novel

agency, but contemplated merely the establishment of a law office as much like the best law offices in the city as circumstances and finances would permit. This idea was indelibly impressed on the society, and is still to-day the basic principle on which its organization is constructed.

For ten years the society's work was carried on as part of the practice of established law offices. The firms of Hill, Barlow, & Homans, Boyden, Palfrey, Bradley, & Twombly, and Warren, Hoague, James, & Bigelow were successively counsel for the society and attended to its cases. It was during this period that many of the important policies of the society were evolved.

The most difficult question which every society faces is with regard to what cases it should accept and what it should reject. All legal aid societies are agreed that they are not in competition with the bar, but the drawing of any precise line is not easy. It is to the credit of the early directors and counsel of the society that they took a broad-minded view of this question and went ahead courageously. Having the support instead of the antagonism of the bar, and knowing that the bar would not misconstrue any bona fide efforts to guarantee legal assistance to the needy, they drew their lines somewhat more broadly than other societies have done. They never proceeded on the principle that it was better for ninety-nine persons to have no counsel at all than that one case, possibly containing a fee, should be lost to some private attorney.

The attitude is illustrated in connection with negligence and personal injury cases. Many societies have flatly ruled that they would take no such cases on the ground that anyone, by agreeing to pay a contingent fee, could retain an attorney. The Boston society, feeling that often there were cases in which the contingent fee would absorb such a proportion of any recovery as to result in a practical denial of justice, refused to adopt such a strict rule. The bar respected the society's leaders, and appreciated that their sole motive was to provide adequate safeguards for the needy. The broader policy, of which this is an example, has resulted in reducing to a minimum the possibility of anyone being refused assistance because of rules of exclusion or rejection.

In another direction the lawyer's point of view manifested itself and gave to the society a tradition from which it has never departed. The legal mind perceived that the society was not dispensing charity, but was securing justice,—a right guaranteed in unequivocal terms by the Declaration of Rights in the Massachusetts Constitution. It therefore refused to erect any moral standard which clients must satisfy as a condition precedent to the right to assistance. In certain cases the morality of the party is itself in issue, and there the moral test would have to be satisfied as a *legal* requirement; but, such cases apart, it was decided that no claim should be rejected because of the applicant's character. Subject to obvious limitations in certain types of cases, this was made the guiding principle. The only line of cleavage was that which good ethics enjoins on every lawyer,—to bring no suit for purely vexatious purposes, and to assist no debtor by technical niceties to escape an honest obligation.

In 1910 the directors were able to realize their plan more completely, and in July of that year they established the society in offices of its own, at 39 Court street, in the heart of the legal and judicial district, where it has since remained. It was believed that making the Legal Aid a separate office would inure to its benefit because it would then have to stand on its own reputation, and succeed or fail according as it measured up to proper standards of efficiency and ability. Legal aid would not be in a secondary position, the sole object of its attorneys would be the promotion of its work. Subsequent years have proved the soundness of this belief.

The present Legal Aid staff consists of seven attorneys, all members of the bar, and graduates of the best law schools, and four stenographers and bookkeepers. Every person gives his entire time to the work. This fact, of itself, makes it clear that legal aid is regarded as important work, and that the obligation to furnish the poor with proper counsel is

taken seriously. Such a staff is able to turn out good work; it is equipped and qualified to prosecute cases from the lowest through the highest courts. In the last six months it has argued one case before the United States circuit court of appeals, and three before the supreme judicial court of Massachusetts. It has earned the respect of the community and the confidence of judges and public officials. In 1916, over five hundred cases were sent to the society by judicial and administrative officers.

Like the large private offices, the Legal Aid Society has specialized. The cases presented by the poor tend to fall into well-defined groups, and these fields of law have been allotted to members of this staff. It is no exaggeration to state that in certain types of cases the society is able to render a more efficient service than any other office in the city. For example, it is obvious that the attorney who has for four years handled all the cases coming within the probate jurisdiction (chiefly separate support and custody of children), and who has each year had about five hundred cases of that sort, should become expert in their conduct.

It has been the realization of this fact which has led the various Boston charity organizations more and more to discard their outworn system of honorary counsel and to turn to the Legal Aid attorneys for guidance in their cases which present legal problems. Thus the society is rapidly becoming an essential link in the chain of organized social effort in the community, and the importance of the contribution which it can make is beginning to be grasped.

If one were dropped into the Legal Aid Society's office, it would be difficult to detect any difference between it and a modest private law office. The fact would be betrayed only by the large number of clients steadily coming and going. Every effort is made to have the applicants feel that they are in a law office,—their law office.

When a client applies at the office, he is received by a clerk and at once taken to any member of the staff who is not engaged. There are no intermediate steps, no recorders or interviewers; the client is neither labeled, numbered, nor ticketed with vari- and multi-colored cards. As in a private office he is received directly by a lawyer who thereupon becomes his attorney and is the only one to hear the story of the client's difficulty, or his trouble, sorrow, or even disgrace.

Professional confidence is religiously observed. Many a strange story is related, many tragedies are revealed within the four walls of the Legal Aid office. There is much material which would make "good copy" for the press, and which would furnish fine advertising material for the organization. But the lawyer's conviction with regard to the impropriety of such conduct is unalterable. No case is on record where any confidence, even of the humblest client, has been violated. This is the great reason why the work of the Legal Aid Society goes forward so quietly, and it explains why even to-day there are many persons in the community who are ignorant of its existence.

After the facts of the matter have been ascertained and recorded by the attorney, the client is advised as to his rights; they consult together as to what steps ought to be taken, and the client then leaves to await a letter notifying him of the developments in the case.

The attorney then takes the case record to the case bookkeeper, who makes the proper entries in the society's "record of cases received," typewrites the index cards, gives the case its file number, and puts the papers in a folder (the standard flat filing system is used). This has consumed possibly two minutes, and the folder is thereupon immediately returned to the attorney, who sets the case in motion by personal visit, telephone call, or letter.

No mimeographed or form letters are used. It has been felt that such a course smacked too much of collection agency methods. Every letter is individual, and dictated in the manner best calculated to set forth the particular facts and to carry the proper appeal or conviction to the opposite party or his attorney. The succeeding steps are in no respect different from the manner in which any practising attorney conducts his cases.

From outside sources the objection has sometimes been raised that this course involved waste of time and effort. The reason for this *modus operandi* is clear in the light of the society's history. Those responsible for its direction, being lawyers, have felt that the organization of the best private offices represented the experience of the bar as to the method best suited to the conduct of a law practice, so that the Legal Aid office should be conducted in a similar manner. It may be that the analogy is unsound. Which method is, in the long run, best calculated to secure the ends for which the society exists, is an open question.

In the matter of records and reports the society has from the outset maintained a high standard. This again was the result of the lawyer's training, which recognized how indispensable good records are if accurate thinking is to be done. The purpose of records is to enable the society itself and the community in general to appraise its work. From accurate statistics it is possible to reason with assurance, and on the basis of known facts it is possible to build with confidence.

Each year the society has printed and published annual reports. In one respect these reports have been more complete than the records of other societies. They have set out in the form of a table for the twelve months the *results* of the society's work stated in terms of how the cases intrusted to it have been disposed of. Thus it appears from the sixteenth annual report that 2,608 new cases were received, and 2,602 cases carried to completion; that in 167 relief was obtained through court proceedings, in 453 settlement or adjustment secured the desired result, in 433 the law afforded no redress, in 43 cases proceedings were blocked because the clients were unable to defray the expenses required by the necessary litigation, and so on. *A priori* it would seem that a record of what the society has accomplished in its cases was as essential as the disbursements side of a cash book. In any event, it has always been the society's policy to make public the facts as to how far it has been successful and how far it has not.

Careful records as to the internal condition of the society are likewise kept. At the end of each month a report is submitted by the case bookkeeper to the counsel-in-chief showing the number of cases received, the number received by each attorney, and their classification, the number of cases disposed of, the dispositions of each attorney, and the reason for every such disposition. A second record shows the exact number and amount of all fees charged. A third, from the financial bookkeeper, displays the trial balance, the itemized expenses for the month, the amounts held in trust for clients, and the society's own balance.

From these reports the counsel-in-chief makes up his monthly report to the board of directors. His statement gives all the figures as to cases and finances for the month, compares the month in 1917 with the same month in 1916, 1915, and 1914, and also shows in a cumulative table (beginning with the society's fiscal year on November 1) the cost to date and the work to date, and compares in parallel columns such figures with the figures for the same period during the three preceding years. In this way the staff is held up to the full measure of its responsibility, and the directors are kept intelligently informed as to the condition of the society.

With regard to finances, the society is scrupulously careful. Lawyers naturally think of clients' moneys in terms of trust funds, and accept as a matter of course the obligation of that relationship to keep such accounts as to be able to render to any client at any time a detailed statement of his account. The system is double entry bookkeeping, with ledger accounts for every person with whom the society has any financial dealings.

At the same time the books record and display the operating expenses of the society in such manner as to permit of cost accounting, thereby making possible the budget system of controlling finances and rigid economy in the expenditure of the society's funds. All finances are reported monthly to the board of directors. In addition, the annual report contains itemized accounts showing to the members of the society

just what has been done with their subscriptions. Each year an accounting is given to the State Board of Charity, which publishes the statement in its own report to the legislature. Finally, the counsel-in-chief, who alone has the power to draw checks against the account in which the funds for current expenses and trust funds are kept, is required to give a surety company fidelity bond in the sum of $5,000.

The gradual process of experimentation and of development of ideas brought to the society last year a new conception of latent possibilities in its work. It became clear that the Legal Aid Society might render to the community a hitherto unperformed service by engaging in what may be called (for lack of better terminology) constructive and preventive work in the field of law. The careful thinking which necessarily preceded and made possible this development was done by Richard W. Hale, Esq., and William H. Pear, Esq., two of the society's directors, who gave freely of their time and guidance in starting the society aright in this new course.

The significance of the movement is thus outlined in the report of the board of directors for 1916:—

> We can best understand the possibilities of this new position by analyzing the work of the society with respect to but one of its recent achievements,—its successful fight on behalf of the borrowers of small loans in Massachusetts. In this connection the society rendered four distinct services. The number and kind of small loans cases finding their way to the society automatically registered a breakdown of the existing laws. The society's files then furnished the necessary material upon which to formulate new legislation. Because of its semipublic and authoritative position, the society was then called upon to so organize public sentiment that the proposed legislation was enacted into law. And, finally, the society has proved a most powerful weapon for preventing evasion of the new laws and assisting in their proper administration.
>
> Of these four functions, the first two are probably the most significant. To be militant in placing needed laws on the books, and vigilant in securing their enforcement, are undoubtedly great services to the community, easily comprehended because of their dramatic appeal. What is even more sorely needed, however, is a sensitive instrument with which to detect the failures of our legal system, and a fund of social experience out of which to build anew.
>
> The present system of the administration of justice is in the process of undergoing great and far-reaching changes by reason of the attempt to reshape its antique framework to meet the needs of modern society. This great task is bringing about experimentation with new methods of administering justice, elimination of unnecessary cost and complicated procedure, and the recasting of the powers of the various courts. The rapid spread of administrative boards, the instituting of small claims courts in which court costs are eliminated, together with the lawyer, the project of a domestic relations court combining the present jurisdiction in that field of the divorce, probate, criminal, and juvenile courts, are all parts of the process of reconstruction. It is the readiness and ability to serve the community in this great task that has so suddenly thrust the society into its present unique position.
>
> The Legal Aid Society is often the only agent for collecting the needed data. How many people are denied justice because they cannot afford to advance the costs of court? Even the most systematically kept court records can disclose, at best, the number of small suits actually begun, but not those which were never brought because of poverty. The answer lies written in the files of the society. What are the most common abuses in the legal profession, and can they be lessened or eliminated? How is the Workmen's Compensation Act working out in practice from the employee's point of view? How far is the neglected wife, child, or parent prevented, by defects in the laws, from securing the support which those very laws attempted to guarantee? These and many other vital questions can be answered in whole, or in part, only by an analysis of the material which is continually pouring into the offices of the Legal Aid Society.

A piece of work done in January, 1917, is illuminating and serves to make the foregoing general propositions more specific and concrete. Although the society had been closely identified with the reform which gave to Massachusetts its new "loan shark" law, reducing interest rates from 15 per cent to 3 per cent per month (Acts of 1916, chap. 224), the lenders recognized that the society's position was independent and impartial. They therefore permitted the society to employ accountants to inspect their books in order to determine operating expenses, losses, the business turnover, and similar basic facts. The investigation was made and the reports are

on file. Some of the results obtained will shortly be published. It is believed that this is the first instance in which any outsider has been given free access to the books of lenders doing a business in unsecured small loans. Its importance lies in the fact that it will now be possible, whenever the question may arise, to determine proper interest charges on the basis of scientifically determined facts submitted and attested to by an impartial agency.

During its sixteen years of life, the society has provided legal aid to 16,635 clients, and has collected in cash, exclusive of decrees and orders calling for weekly payments in separate support, illegitimacy, and workmen's compensation cases, $120,336.95 for its clients. The total expenses of the work amount to $50,237.19, which has been provided by slightly more than two hundred subscribers each year, the large majority of whom were attorneys. The cost of handling each case was $1.63 in 1915 and $1.69 in 1916.

If, with these facts in mind, the words of Article XI. of the Massachusetts Declaration of Rights are read:

> Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws,—

the conclusion seems justified that the bar of the city of Boston has, to a very real extent, put the theory of the fundamental law into practice.

Reginald Heber Smith

Social Justice and Legal Education

Ahead of us are problems still more crucial and complex; their legal solutions may perhaps be neither individualistic nor collectivistic, but they must be applications of a public policy scientifically conceived. The questions of centralization and co-operation alone, together with the further advances in science, will overturn many established standards of thought, and will call for our every power of vision and adjustment. Our legal house must be in order. The public and the university administrators should urge the leaders in legal education to work out their new system with as little delay as may be consistent with soundness, and then stand ready to support it. Heretofore the law schools have been mainly the recorders and systematizers of the law. Let them not fear to enter a larger field. Let them define and promulgate principles for the status of the legal precedent, and for the policy and technique of legislation. Let them, as a combined group of constructive thinkers, formulate and propound to the bar and to the legislatures statutory reforms of procedure and of evidence. Let them by the sociological, scientific method become, through their graduates at the bar and on the bench, the creators of a common law system capable of developing in closer responsiveness to shifting conditions and changing standards. Here they have a far greater task and opportunity than had the great codifiers or clarifiers of legal principle, the Babylonian lawyers of Hammurabi, or the advocates and teachers of Justinian; for they are called upon now, not to crystallize or to formulate law, but to instil into it the active germ of a conscious, creative evolution.—Louis B. Wehle in Address before National Conference on Universities and Public Service.

The Legal Aid Society of San Francisco

Its Genesis and Status

BY R. S. GRAY
of the San Francisco Bar

TO A VERY large degree it is a gift from the state, through the Commission of Immigration and Housing of the state of California. From another point of view, it is clearly a gift from the bench and bar of the city and county of San Francisco.

It is a partnership between state and local, social and civic, organizations, both public and private, philanthropic and economic, to carry on a business of vital importance to the community and commonwealth, and a business which requires specialization in the administration of justice by the courts.

Such an institution does not arise overnight nor full-fledged, nor can it be successfully framed or operated either blindly ignoring or following the organization or work of similar instrumentalities.

Individuals and local conditions must play a large part, yet there must be a high degree of that type of education which consists of the development of the power to work with others for the common good.

The history of many so-called legal aid offices and societies has been a pitiful admixture of inefficient philanthropy and more or less secret advertisement for selfish purposes, but there have also been plenty of great and soul-inspiring models. In California, the marvelous social and professional efficiency in the work of the Public Defender as a part of the freeholders' charter government of the county of Los Angeles has been an inspiring incentive, and the long and wonderful history of the Legal Aid Society in the city of New York, and similar organizations, a reliable guide in many respects. Yet, from the very beginning there has been an earnest effort at San Francisco to add something worth while to such inheritance, and this is illustrated somewhat, we trust, in the organization of our law committee in three divisions, the first known as senior counselors, the second as associate counselors, and the third as assistant attorneys. It may therefore be that a brief statement as to our origin, organization, and affairs will prove of service elsewhere. It seems most appropriate at this point to refer to the article appearing in the issue of November, 1914, of CASE AND COMMENT, which was perhaps the first adequate, though brief, presentation to the legal profession at large of the work of the Public Defender at Los Angeles. It follows naturally to quote from the "Recorder" editorial of September 11, 1915, a message all the more significant because that paper is the official organ of our courts at San Francisco, and what we so quote had been for some time pressing very hard upon our state commission above referred to, and which is expressly charged with the duty of encouraging the establishment of legal aid societies.

"The difficulties that confront the necessitous, the ignorant, and the foreigner in securing justice are well known. . . . This work might well be undertaken here under the auspices and direction of the Commonwealth Club, the Associated Charities, the Bar Association, and kindred organizations, through a legal aid bureau to be established and maintained by them, under the direction

of an experienced paid attorney. As in Minneapolis, the work of the bureau should be conducted in co-operation with the various law schools of San Francisco and vicinity."

That editorial closed with the pointed question, "Who will take the initiative?"

We might well be justified in saying that our Legal Aid Society is a gift from the "Recorder" and its managing editor, Andrew Y. Wood. He would, however, most emphatically decline the honor and be the first to point out a score of others to whom recognition in the work should be given. And here again we feel obligated to refer to the address given at the meeting of the California Bar Association in November, 1914, at Oakland, our sister city, by Walton J. Wood, the Public Defender at Los Angeles, on "The Place of the Public Defender in the Administration of Justice." He has ever encouraged us in our efforts to efficiently organize a Legal Aid Society in San Francisco, and his experience with, and the aid he has obtained from, the Bar Association at Los Angeles, have been great factors with us. The files of the "Recorder" show how prompt and decisive was the answer to the question of its managing editor, the bench and bar here bringing into swift and effective co-ordination such organizations as the University Law Schools, the Associated Charities, the Native Sons of the Golden West, the Catholic Girls Befriending Society, the Juvenile Protective Association, and the Federated Jewish Charities, when the right moment for action came. The very first effective organization steps were taken in the chambers of the district court of appeal for the first judicial district of California, September 17, 1915, only six days after Mr. Wood of the "Recorder" asked that question. At that time a temporary organization was effected, with Mr. Justice Kerrigan of that court as temporary chairman, and Mr. George L. Bell (the executive officer and attorney of such state commission) as temporary secretary, and the proceedings of that meeting were fully reported and made a matter of public record in the issue of the "Recorder" the next day, and the movement backed up with another splendid editorial in that paper.

At that meeting, Mr. Bell stated that, from his experience as secretary of the Commission of Immigration and Housing, a legal aid society was extremely necessary in San Francisco. The commission, he stated, had practically 6,000 complaints, mostly of exploitation and fraud, lodged with it by poor immigrants and foreigners, the preceding year, and there should be some bureau, public in character, to which at least some of these claims could be referred. He pointed out the danger of having such a bureau established as an adjunct to the offices of any lawyer engaged in private practice.

The "Recorder" pressed the publicity phase of the matter, presenting, among other interviews, in its issue of September 22d, 1915, the statement of Jesse W. Lilienthal, then president of the Bar Association of San Francisco, and who had personal experience with the work of the New York City Legal Aid Society, that anything he could do as president of the Bar Association or as an individual to further the project of a legal aid society in San Francisco, he would be very glad to do.

October 15, 1915, representatives from the Associated Charities, and other charitable organizations, from Hastings College of the Law, the Department of Jurisprudence of the University of California, the Young Men's Christian Association Law College of San Francisco, the Commission of Immigration and Housing of the state of California, the Board of Trade of San Francisco, and the Chamber of Commerce of San Francisco, the Bar Association of San Francisco, and others, were present at a meeting called by Mr. Justice Kerrigan in the court room of that district court of appeal, and it was made plain at that meeting that other important institutions, such as Stanford University, would gladly co-operate. O. K. Cushing, the president of the Associated Charities of San Francisco, addressed the meeting, outlining the work and achievements of the legal aid societies of New York, Chicago, Minneapolis, and other cities, and told of the work that was being done at Harvard and other law schools, and he moved that Mr. Justice Kerrigan ap-

point a committee to be composed of representatives from the bar at large, the Bar Association of San Francisco, the charitable organizations (mentioning the three groups into which they were mainly divided), and the various law schools and universities, to formulate a plan of permanent organization and operation. This motion was unanimously adopted, together with one providing that Mr. Cushing be the chairman of that permanent committee on organization, Mr. Justice Kerrigan having made plain his reasons for concluding that he should not proceed further in such work of organization, and such permanent committee was given full power to act. Early in November, 1915, Mr. Justice Kerrigan appointed such permanent committee of such broad and general representative character, and, after a large amount of preliminary work, at a meeting of that committee February 11th, 1916, at the office of the Commission of Immigration and Housing, the way was cleared for the final steps in organization. The proceedings of that meeting will be found reported in the issue of February 14th, 1916, of the "Recorder." This permanent committee upon organization went out of existence at the time of the adoption of the constitution and by-laws for the society at the meeting on March 10th, 1916, and offices were then placed at the disposal of the society, and there it has carried on its work ever since, in the Hearst Building, through the generosity of Mrs. Phoebe A. Hearst (in connection with the Travelers Aid Society of California), and such work was established about May 1st, 1916. It goes without saying that she is our first honorary vice president, and in this work as in that of our state university she has made herself beloved. The immediate and direct legal work of the society is under the charge of Alden Ames, as general attorney of the society, and who is its only salaried employee, and who also has personal knowledge of the work of the great New York society and other like societies. All his work has been done under the direct and close supervision and co-operation of the executive committee of the society, composed of five of its board of directors, the president being a member *ex officio*. Of late the organization of the law committee, under resolution of the board of directors, has enabled the executive committee to get rid of much of its mere detail work. For some months the executive committee felt it advisable to meet every week and carefully review the commencement and progress of each case, but this is no longer necessary, owing, in large degree, to the co-operation between our general attorney and the chairman and members of the second division of the law committee.

From the beginning we have had, through the generosity of the Rt. Rev. Edward Hanna, Roman Catholic Archbishop, of San Francisco (who is also a member of the Commission of Immigration and Housing), the assistance of Miss E. F. McCartney, as office executive secretary, and her experience as a social worker in addition to her legal knowledge has been greatly appreciated, and most naturally the Archbishop is also an honorary vice president, and it will thus be seen that such offices are far from being mere titles. The necessary limits upon this article prevent the naming of many who have rendered yeoman service, but something from the record presented at our annual meeting March 9th, 1917, of the ten months' work of our general attorney and his office and other assistants certainly should here be recorded. Some 242 cases handled in the first ten months at an average cost of only about $5 per case, and involving practically every phase and branch of the law, stand as a convincing record of the close and effective co-operation of all agencies concerned, and all the more so because the society has managed to keep out of all court proceedings except about eighteen. As noted by Mr. Ames: "The question of costs is often an almost insurmountable difficulty, especially in the case of women who cannot earn any more than the most nominal sum, while they are taking care of their children."

A case pending in a neighboring city, where an able judge did not believe he had the power to remit the jury fees payable in advance, and was sustained in his views by the district court of appeal, is now in the hands of our supreme court

on that point under an alternative writ of mandate, the general attorney of the society and the chairman of the second division of the law committee aiding the attorney who seeks such relief for an indigent client upon practically undisputed facts, returnable April 2d, 1917. We hope to find that our general trial courts have the power of the Federal courts in such matters, even if not expressly authorized in that behalf, as some of our courts of limited jurisdiction are. In closing, I will quote again from our general attorney:

> We have actually aided 242 persons in this short period. At first we felt our way along, experimenting here and there, and now have opened up a vast field of work for the assistance of those who are in need of just such help as we can and do give. Our work has been confined, so far as it is possible to do so, to the services which are ordinarily rendered by a practising attorney to his client. It is worthy of note, however, that only about 10 per cent of the cases have involved actual litigation. In the great majority of cases that service has consisted of the giving of timely advice to persons who in most instances have only vaguely understood that the situation involved a question of law.

The exhaustive tabulation of these cases which our general attorney can furnish, as to source, character, treatment, and results, might be of great service to others contemplating such work.

The society is supported entirely by voluntary subscriptions so far, not even a penny being required from anyone seeking its aid, and most of the $1,715 cash contributions have been from members of the bar, leaving a balance, after ten months' operation, of some $595.99 with which to continue, and we hope this year to demonstrate to the community the worth of the service to such an extent that all classes capable of so aiding will be glad to share the increasing financial burden as a sound investment giving rich returns.

P. S. Teng

Uniformity of Laws Not a Name, But a Principle

"Uniformity is not simply a name, it is a principle, and a principle which is of the very essence of democracy, if we mean by democracy that state of society in which there is one law, equable in its application to the rights of all men alike, everywhere; and to achieve that ideal in matters which relate to interstate interests or transactions, there must be one law given to all the states, and such law must be secured either by Federal enactment, involuntarily imposed, compulsory upon all states, irrespective of their particular desires, or it must be secured by voluntary uniform state enactment growing out of its deliberate initiative; which way we believe the wiser and the safer, and the only way which is thoroughly consistent with democratic conception."—Charles Thaddeus Terry, President of the National Conference.

The Law Department of Emory University

THE LAMAR SCHOOL OF LAW, ATLANTA, GA.

THE establishment of a law school is always of great interest to the legal profession. The mediocre or poor lawyer will ever desire that there be no more law schools established, because for him competition is now altogether too keen to be the life of trade. On the other hand, the establishment of a law school raises an inquiry in the mind of that type of lawyer whose profession means more to him than a way to make some sort of a living. He will wonder whether the new law school will send out men who will simply add to the number of practising lawyers or whether the program adopted will, on the whole, insure that the majority of its graduates will have such ideals and ability as will furnish a basis for hope that the new institution will make for the uplift of the profession.

The Lamar School of Law, recently established in Atlanta, Georgia, by Emory University, should be of interest to every lawyer, wherever located, who has at heart the welfare of his profession. It is located in a section where the idea has prevailed that a two years' course was sufficient.

It began its first session last September with a very satisfactory enrolment, which bids fair to double or treble the coming year.

The method of instruction used is that which now prevails in all the leading law schools of the country, the case method. The course of study extends over three years of time. In order that the high standard which the school has set for its graduates may be maintained, it is provided that no one may receive a degree until he has done at least two years of residence work. Credit may be had for only one year of work done at another institution, and will in no case be given upon certificate. Examination must be taken in all courses for which credit is asked.

The material equipment of the school is excelled by that of few schools in the country. It occupies a separate building of concrete and Georgia marble, three stories high, 152 feet long, and 52 feet wide, which provides a library, moot court room, five large class rooms, and twelve offices and rooms for group meetings.

A library has been provided, with a view to the needs of the school under the case method of instruction. It includes all of the English Reports, Lawyers Reports Annotated, American Decisions, American Reports, American State Reports, English Ruling Cases, British Ruling Cases, and other sets of selected cases, all of the National Reporter System, the reports of the states of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, and the United States Supreme Court Reports. It also contains the Digest System, Ruling Case Law, Corpus Juris, and Cyc., the different cyclopedias of Law, Pleading, and Practice, and all of the well-known treatises and textbooks. The library thus places at the disposal of the student practically every decided case in this country and England, as well as the standard law treatises and textbooks.

The faculty, eight in number, has likewise been selected with a view to the system of instruction used.

Editorial Comment

And step by step, since time began,
I see the steady gain of man.—Whittier.

Case and Comment

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A Ghost from the Past

A SINGULAR incident recently occurred at the trial in London of four alleged conspirators, three of whom were women, charged with having plotted to murder the Prime Minister, Lloyd-George, and Mr. Arthur Henderson, a member of the British War Council, by the use of poison. On the failure of the Crown to produce a certain witness against the defendants, the latter's counsel, a barrister of East Indian birth named Riza, suggested that the defendants should have a trial by ordeal. If it were his purpose to impress the jury with the alleged sinister significance of the Crown's neglect to produce the witness, he could not well have chosen a more striking means of so doing. Probably this identical demand has not been voiced in an English court for seven centuries. The judge, when he recovered from his pardonable astonishment, said: "I fear that would be impossible. It has been abolished. Do you seriously suggest the ladies should walk over hot plowshares in order to prove their innocence?"

Riza: I do.

The Judge: It is no use submitting such a suggestion. You are not serious.

Riza: I do seriously suggest it.

The ordeal by walking barefoot over glowing plowshares, generally nine, which was referred to by the court, was well known in medieval Germany and England. The law codes of that period show this as an ordinary criminal procedure, but it is perhaps best remembered by the legends of the German Queen Kunigunde and of Queen Emma, mother of Edward the Confessor, who triumphantly purged herself, in this manner, of charges made against her, and gratefully gave nine manors to the church in memory of the nine plowshares.

This form of ordeal fell into disfavor with the church and was gradually abandoned, even before it was formally abolished. "There is no doubt," says Mr. Luke Owen Pike in his 'History of Crime in England,' "that to the clergy is due the credit of putting an end to this particular form of barbarism." Sir James Fitzjames Stephen also says: "It appears probable that ordeals fell into disuse in the course of the thirteenth century, probably in consequence of the decrees of the Lateran Council of 1216."

This relic of the savagery and superstitution of the past can now serve little purpose except "to point a moral or adorn a tale."

Limiting the Right to Strike

IN THE memorable opinion declaring the constitutionality of the Adamson law, Chief Justice White, who is a statesman as well as a jurist, has embodied these significant words:

> Whatever would be the right of an employee engaged in a private business to demand such wages as he desires, to leave the employment if he does not get them, and by concert of action to agree with others to leave upon the same condition, such rights are necessarily subject to limitation when employment is accepted in a business charged with a public interest, and as to which the power to regulate commerce possessed by Congress applied, and the resulting right to fix in a case of disagreement and dispute a standard of wages, as we have seen, necessarily obtained. In other words, considering comprehensively the situation of the employer and the employee in the light of the obligation arising from the public interest and of the work in which they are engaged and the degree of regulation which may be lawfully exerted by Congress as to that business, it must follow that the exercise of the lawful governmental right is controlling.

This would seem to imply that workers employed on railways engaged in interstate commerce must not be permitted to bring on a general strike. It indicates that employees of interstate carriers, because of the public character of railroads, are affected with a public interest and have no more right to strike and tie up the commerce of the country than have soldiers and sailors. The public right to avert threatened starvation is distinctly placed above the right to strike by these words of the opinion:

> The public right to have interstate commerce uninterrupted is a basic principle paramount to interests of the railroads or of their employees, both in public service, and subject to the supreme, unrestricted power of Congress to take any action necessary to maintain freedom and uninterruption of interstate commerce.

This decision is based upon the power of Congress to regulate interstate commerce. In the exercise of that power it protects the paramount interests of the public. We may now anticipate legislation compelling the submission to arbitration of disputes between interstate railways and their employees, if such disagreement threatens the interruption of the transportation service.

The right of Congress to enact legislation to prevent wholesale strikes on the lines of interstate railroad carriers was recently discussed by Sol. H. Kauffman, Esq., of the Tulsa (Oklahoma) Bar, who concludes that it is as much within the power of Congress to pass such legislation as to enact the Safety Appliance Act, the Hours of Service Law, or the Employer's Liability Laws. He states:

"But the first question to be considered is its constitutionality in the face of the 13th Amendment to the Federal Constitution abolishing slavery and involuntary servitude.

"It has been deemed to be elementary, under our Constitution, that no man shall be compelled to labor against his will; and our legislation, as a rule, has avoided such effect being given to it. Indeed, peonage statutes have been enacted to prevent it.

"Cooley, that master of constitutional law, says in his treatise on constitutional law: 'The general rule is that every person *sui juris* has a right to choose his own employment, and to devote his labor to any calling, or at his option to hire it out in the service of others. This is one of the first and highest of all civil rights.' 3d ed. page 255. Therefore, a person may, generally speaking, labor or not, as he chooses; but this does not mean that he may contract for a definite period and then voluntarily abandon his work without subjecting himself to some liability, for it is plain that, in such a case and under every system of laws, he lays himself liable to damages.

"But it is contended that that is as far as any liability may be imposed, and that in no event could Congress compel him to work or subject him to criminal punishment for failure to do so. Generally speaking, and if no qualifications or exceptions were admissible, this would be true. But from an early date in the history of mercantile or commerce-dealing nations, an exception has existed, under every code, with reference to seamen or sailors. This exception has existed by reason of the very nature of the contract, the circumstances surrounding it, and the necessity of the case. The right to compel a seaman, under the pain of criminal liability, to serve out the term

of his contract, was considered in Robertson v. Baldwin, 165 U. S. 275, 282, 41 L. ed. 715, 718, 17 Sup. Ct. Rep. 326, the authorities reviewed, and the conclusion reached that, notwithstanding the 13th Amendment (and the very able dissenting opinion of Justice Harlan), that a seaman could be so compelled to labor. First, the court thought that this exception was valid, because the exception has been recognized since time immemorial. And why have the services of a seaman been regarded as exceptional? Says the court:

> From the earliest historical period the contract of the sailor has been treated as an exceptional one and involving, to a certain extent, the surrender of his personal liability during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some authority, beyond the ordinary civil remedies upon contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Malloy forcibly expresses it, "to rot in her neglected brine." Such desertion might involve a long delay of the vessel, while the master is seeking another crew, an abandonment of the voyage, and, in some cases, the safety of the ship itself. Hence, the laws of nearly all maritime nations have made provision for securing the personal attendance of the crew on board, and for their criminal punishment for desertion, or absence without leave during the life of the shipping articles.

"The exception, then, is justified on the principle of necessity. How appropriate is the language quoted above to the case of a general railroad strike? Only, in the case of a railroad strike, how pitifully inadequate it is to depict the more disastrous effect, the far-reaching consequence. But the underlying principle is the same, the protection of commerce.

"In certain cases, or in a certain sense, Congress has authority over international commerce, but it is not complete. But in the case of interstate commerce, it is almost plenary, whether that commerce be by land or by water.

"That the commerce is by land or by water makes no difference where the principles are the same. The law of shipping or the law applicable in admiralty has often been applied to transportation by rail. For instance, the railroad company is given a lien for its freight; it is entitled to charge demurrage; the conductor is the master of his train between stations and away from means of communication. There is, of course, a vast difference between rail and water transportation, because the railroad train en route has the means of communication nearly always at hand. But in other respects the duties and obligations of a railroad carrier to-day in the United States are more onerous than those of ship carriers; furthermore, their operation more directly touches the public weal. Summing up the matter, no reason exists for this exception in the case of water navigation that does not apply in the case of railroad transportation in the United States. This much must be conceded by all reasonable men. . . ."

As said in Pensacola Teleg. Co. v. Western U. Teleg. Co. 96 U. S. 1, 9, 24 L. ed. 708, 710:

> The powers of Congress in the regulation of interstate commerce and in other matters keep pace with the progress of the country, and adapt themselves to the new developments of times and circumstances. They extend from the horse with its rider to the stagecoach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they related, at all times and under all circumstances. As they were intrusted to the general government for the good of the nation, it is not only the right, but the duty, of Congress to see to it that intercourse among the states and the transmission of intelligence are not obstructed or unnecessarily encumbered.

Erratum

W. O. HART, Esq., of the New Orleans Bar, whose valuable article on the "Movement for Uniform State Laws" appeared in the January CASE AND COMMENT, desires us to say that he was mistaken in stating therein that the commissioners from Delaware never appeared, because, as a matter of fact, two of its commissioners were present at the Conference held at Montreal in 1913, and Delaware was one of the states represented at the organization of the Conference, though for a long time thereafter its commissioners took no part.

Readers' Comments

Sociological Aspects of the Income Tax.

Editor Case and Comment:

Please permit me to say something I think should be said respecting the "Sociological Aspects of the Income Tax," by Henry Campbell Black, LL.D., in your March number:

The learned doctor concludes that inasmuch as the income of the man, amounting to $1 or $100, is not taxed to proportionately bear the burden of government with the income of $100,000 or $100,000,000, our present income tax is not democratic; and hence all incomes should be taxed irrespective of amount. If not, then we are in the grip of socialism.

The same statement has often been made against the allowance of an exemption to the head of a family under the general taxation laws; but this has nevertheless become universal, and so well established as not at all likely of change.

Therefore, on precedent and the tendencies of the times, we might as well accept the inevitable now, particularly in view of what the experience of other countries has been with the same kind of taxation. That we are now being led or driven to some certain condition has only a discussional significance.

Dr. Black also contends that a graduated income tax and the inheritance tax will have a tendency to discourage the accumulation of wealth. The income tax exempts $3,000 to single men and $5,000 to the heads of families, while the exemption in the inheritance tax is $50,000.

These figures alone are sufficient to make argument unnecessary to more than 95 per cent of our people, because they can never have such incomes or such fortunes.

Dr. Black puts no limit on income or fortune, and, therefore, all, even to unnumbered millions or billions, should not be "discouraged." Most of these incomes and fortunes, for they are now a fact among us, have been encouraged, if not indeed made, by our government in our traditional policy of protecting infant industries, and have grown to be gigantic and uncontrollable. Now the contention is, that our government should do nothing to "dissipate" them, which means that they will eventually become the government in reality as they now are in potentiality, not even by taxation, unless the burden is laid equally on all irrespective, whether $1 or $1,000,000.

Just one other point: Dr. Black contends that as Capital is discouraged so will Labor suffer. This is on the theory, and none other, that the wealth of the world should be in the hands of the few to give employment to the many; that men should not be the proprietors of land, but be tenants of the rich; that they should not be producers of articles of commerce on their own account, but wageworkers for syndicates and trusts; that they should not be venders of wares, but clerks for department stores; that they should not engage in autotransportation of freight and passengers but leave these to be monopolized by the traction and the railroad companies; that, in short, individual man should be nothing and attempt nothing, leaving everything to "accumulations" of wealth.

Nothing is thus left to the generality of the people but abject subservience.

The majority of the wealth of this country, as some say, has drifted into the hands of about one hundred men. If this progression continues, another generation may see this number reduced to ten, while still another may see a still further concentration into the hands of one family. At this rate of going, absolute monarchy in America is not more than fifty years ahead of us, to come through this concentration of wealth that Dr. Black thinks should not be retarded by our present income and inheritance tax.

Topeka, Kansas. A. A. Graham.

Among the New Decisions

Truth is Justice's handmaid, freedom is its child, peace is its companion, safety walks in its steps.—Sidney Smith.

Attachment — sale — property of stranger — attack. An action was instituted in the district court of Montana against E. H. Thompson, and a horse belonging to C. E. Thompson was attached in said action. C. E. Thompson was a nonresident, and no service of process of any kind was had or attempted on him. The court made an order reciting that an immediate sale of said horse was necessary in order to conserve the interest of the parties to the suit, and directed the sheriff to make sale of said horse after giving two days' notice by posting up notices of the time and place of the said sale in three public places in said county. It is held, in the Oklahoma case of Davies v. Thompson, 160 Pac. 75, that the actual owner of the horse is not bound by said sale, and can attack said proceedings collaterally.

The effect of the attachment and sale of a stranger's property is considered in the note appended to the foregoing case in L.R.A.1917B, 395.

Attorney — concealment of evidence — reprimand. An attorney at law, having in his possession a copy or duplicate of an original contract, the contents of which are material to the determination of the issues in a case, who conceals the same, and replies, when called upon by opposing counsel to produce it, that the contract is not in his possession or custody or under his control, when, as a matter of fact, the said contract is at that time where it has been concealed by him, is held guilty of unprofessional conduct and subject to a reprimand therefor in the New Mexico case of Re Marron, 160 Pac. 391, annotated in L.R.A.1917B, 378.

Automobile — signal of traffic officer — duty as to care. The signal of a traffic officer to an automobilist to cross a street intersection, it is held in Melville v. Rollwage, 171 Ky. 607, 188 S. W. 638, annotated in L.R.A.1917B, 133, does not absolve him from the duty of sounding a warning, slowing his speed, or otherwise exercising reasonable care for the safety of pedestrians on the opposite foot crossing.

Bills and notes — guaranty — indorsement. When the payee of a negotiable promissory note transfers it by indorsing thereon, "Payment guaranteed. Protest waived," the purchaser is held in the Oklahoma case of Mangold & G. Bank v. Utterback, 160 Pac. 713, L.R.A. 1917B, 364, to be an "indorsee," within the rule protecting an innocent purchaser of such paper for value and before maturity against defenses good between the original parties.

Commerce — collecting and returning laundry. A corporation located and doing business in Missouri as a steam laundry sent an employee with a wagon to gather up the linen of patrons in Kansas City, Kansas, carry it to the laundry, and, when the service was completed, deliver it to the patrons in Kansas, and collect the charges. The employee, while so engaged, was arrested and fined for the violation of an ordinance of Kansas City, Kansas, imposing a license tax upon each laundry operated within the city, the amount to be determined by the number of wagons employed. It is held in the Kansas case of Kansas City v. Seaman, 160 Pac. 1139, annotated in L.R.A. 1917B, 341, that the conviction is unlawful, first, for the reason that the employee of the laundry company was not conducting a laundry within the city, as contemplated by the ordinance, and, second for the reason that collecting the articles in Kansas, carrying them into Missouri, and returning them to their owners after the service had been performed, is interstate commerce.

Commerce — interstate — seizure of liquor in possession of carrier. The state, it is held in the South Carolina case of Charleston & W. C. R. Co. v. Gosnell, 90 S. E. 264, L.R.A.1917B, 215, may seize, in possession of the carrier, intoxicating liquor shipped from one state to another, consigned to the consignor, with directions to notify a particular person, who intends it for unlawful use, if it is left in possession of the carrier for an unreasonable time. This question is of less importance than formerly, since the passage of the Webb-Kenyon Act, the operation of which is not dependent upon the termination of interstate transportation.

Commissions — jurisdiction — to compel utility to produce its books for examination by adverse party. That the Alabama Commission has power to require a utility to produce in advance of a hearing under the Commission's supervision, its books and papers pertinent to the proceeding, for examination, by attorneys and experts of the adverse parties, is held in Birmingham v. Southern Bell Teleph. & Teleg. Co. P.U.R.1917A, 200, by virtue of its general jurisdiction in respect to supervising, regulating, and controlling utilities in all matters relating to rates, charges, service, and facilities, and to compel the production of the books, papers, or accounts, "in order that an examination thereof may be made by the Commission, or under its direction."

Constitutional law — amendment — referendum. The Constitution and the statutes of Ohio, it is held in Hockett v. State Liquor Licensing Board, 91 Ohio St. 176, 110 N. E. 485, provide ample and adequate legal machinery for the initiation, submission, and adoption or rejection of any proposed amendment to the Constitution of Ohio by what is known as a referendum vote.

This decision is accompanied in L.R.A. 1917B, 7, by an extensive note on the initiative and referendum.

Constitutional law — due process — confiscatory natural gas rate. That a natural gas rate fixed by a state Commission is confiscatory in violation of the Federal Constitution is held in the Kansas case of Landon v. Public Utilities Commission, 234 Fed. 152, P.U.R. 1917A, 120, where the rate will not produce sufficient revenue to provide for extensions to secure gas to replace a failing supply, for a sufficient sum to purchase gas, for depreciation due to the expiring life of the company, and for a return of 8 per cent rather than 6 per cent.

Contempt — criminal — rights of accused. A proceeding instituted in the court of chancery for the purpose of having that court adjudge whether or not the defendant in a cause pending therein was guilty of a contemptuous violation of an injunction issued by it is held in Staley v. South Jersey Realty Co. 83 N. J. Eq. 300, 90 Atl. 1042, to be a proceeding at law in a criminal contempt in which the defendant is entitled to all of the substantial rights of a person accused of crime that are consistent with the summary nature of the proceeding and the processes of the tribunal in

which it is administered, one of which rights is that the incriminating testimony shall be given by witnesses subject to cross-examination and impeachment under the ordinary rules of evidence. The applicability, in a proceeding to punish a criminal contempt, of the rules of evidence in criminal cases, is considered in the note accompanying the foregoing decision in L.R.A.1917B, 113.

Contract within Statute of Frauds — parol modification — validity. Parties to a written agreement within the provisions of the Statute of Frauds may not, it is held in Bonicamp v. Starbuck, 25 Okla. 483, 106 Pac. 839, by subsequent oral agreement, add to or alter one or more of its terms, and thus make a new contract resting partly in writing and partly in parol; and where they do, in a suit on said new contract, testimony to establish such subsequent agreement is not admissible in evidence. The effect of the Statute of Frauds upon the right to modify, by subsequent parol agreement, a written contract required by the statute to be in writing, is considered in the note appended to the foregoing case in L.R.A.1917B, 141.

Criminal law — presence at receipt of verdict. The receipt of the verdict in the absence of one accused of illegal sale of intoxicating liquors is held to violate his constitutional right to be present at every stage of the trial, in the Mississippi case of Woods v. Tupelo, 72 So. 879, accompanied in L.R.A.1917B, 344, by a note as to the necessity of the presence of the accused at the rendition of a verdict for a misdemeanor.

Deed — conveyance to woman and her children — estate. A conveyance of a remainder to a woman and her children forever is held to rest in her and her children living at the time, a life estate in common in Cullens v. Cullens, 161 N. C. 344, 77 S. E. 228, annotated in L.R.A. 1917B, 74.

Divorce — changing custody of child. When, in an action for divorce, a decree has been rendered granting the husband a divorce and awarding him the exclusive care, custody, and education of their minor son, and directing that the actual custody of said child be placed with the husband's parents, and according the wife the privilege of visiting said child twice each month without the hearing of and without interference from any person, and directing the husband's parents to treat her as a guest during the period of her visits, and when the right of visitation has not been accorded the wife according to the spirit and intent of the decree, the court is held in the Oklahoma case of Copeland v. Copeland, 159 Pac. 1122, to have the authority to modify its order and place said child a portion of the time with the parents of the wife, they being in every way suitable, so that her right of visitation may be enforced.

The remedy for a refusal to permit access to or visitation of children, as provided by a decree of divorce, is treated in the note appended to the foregoing decision in L.R.A.1917B, 287.

Electricity — permission to operate — noise — odor. That permission to operate an electrical plant will not be denied merely because of noise and odor from the fuel is held in the New Hampshire case of Re Ford, P.U.R.1917A, 253; since, if the operation is a public nuisance, it can be abated by the courts.

Eminent domain — injury by garbage incinerator — liability. The establishment and operation by a municipal corporation of a garbage incinerator in such a manner as to depreciate the value of neighboring property and menace the health of its owner and his family is held to be within a constitutional provision requiring compensation for property taken or damaged for public use, in the Washington case of Jacobs v. Seattle, 160 Pac. 299, L.R.A.1917B, 329, even though, being authorized by the legislature, it cannot, under the statute, be declared a nuisance.

Evidence — that contract was not to be enforced. Parol evidence is held admissible in Coffman v. Malone, 98 Neb. 819, 154 N. W. 726, annotated in L.R.A. 1917B, 258, to show that the parties to

the suit had mutually agreed that a written contract which plaintiff is seeking to enforce was never to be performed, but was a mere sham, executed for the purpose of influencing the conduct of a third person.

Food — ice cream standard — regulation. To prevent fraud the police power, it is held in State v. Hutchinson Ice Cream Co. 168 Iowa, 1, 147 N. W. 195, annotated in L.R.A.1917B, 198, extends to the fixing of a standard for ice cream without unconstitutional impairment of liberty or property rights. It is further held that the mere fact that a frozen mixture containing less than a certain percentage of butter fat cannot be sold as ice cream does not prevent its sale so as to deprive the owner of his property without due process of law. Nor is fixing the standard for ice cream at a mixture containing 12 per cent of butter fat for plain cream and 10 per cent for fruit or nut cream so unreasonable as to render the statute void.

Highway — duty to look out for passing vehicles. That one standing in the roadway engaged in inspecting a burst tire on an automobile in which he had been riding is not bound to look out for passing vehicles if there is room for them to pass him in safety is held in the Rhode Island case of Humes v. Schaller, 99 Atl. 55, L.R.A.1917B, 316. This appears to be the first case which has considered this specific question.

Infant — injury to unborn child — liability. That no liability to an infant exists for an injury rendering it epileptic, inflicted so long before birth that at the time it could not have been born viable, is held in the Wisconsin case of Lipps v. Milwaukee Electric R. & Light Co. 159 N. W. 916, L.R.A.1917B, 334.

Initiative and referendum — power of legislature to repeal initiated statute. The reservation by the people, in the constitutional provision vesting the legislative power in the legislature, of the right to propose measures which the legislature must pass and submit to the people for ratification, is held in State ex rel. Richards v. Whisman, 36 S. D. 260, 154 N. W. 707, L.R.A.1917B, 1, not to deprive the legislature of power to repeal a law enacted upon the people's initiative, where the right to require any law enacted by the legislature to be referred to the people for ratification is also reserved.

Insurance — conflicting provisions — enforcement. A provision in an accident insurance policy for *pro rata* liability of the maker, in case additional insurance of that nature is taken without notifying him, is held not so repugnant to a provision making the insurer liable for a specified amount in case of accident that it must yield thereto in the South Dakota case of Dustin v. Interstate Business Men's Acci. Asso. 159 N. W. 395, L.R.A.1917B, 319. While provisions for prorating in case of other insurance are common in fire insurance policies, a provision of this character in an accident policy seems to be a new one, and no other direct authority dealing with such a provision has been found.

Insurance — insurable interest — illegal wife. A woman living with a man as his wife pursuant to a formal but illegal marriage is held to have an insurable interest in his life in Western & S. L. Ins. Co. v. Webster, 172 Ky. 444, 189 S. W. 429, L.R.A.1917B, 375, which further holds that the annulment of a formal but illegal marriage, during which the woman took insurance on the life of the man, destroys her insurable interest, and she can recover only the premiums which she has paid on the policy.

Insurance — interest of conditional vendor — illegal use of property. Insurance on the interest of a conditional vendor in household furniture, it is held in the Mississippi case of Ætna Ins. Co. v. Heidelburg, 72 So. 852, annotated in L.R.A.1917B, 253, is not vitiated by the fact that the vendee uses it for conducting a house of ill fame; at least, if, at the time of loss, such business had been discontinued and the furniture was in charge of a watchman.

Insurance — time of incontestability — how reckoned. That the period after the expiration of which a policy of life insurance is incontestable is calculated from its date, and not from the day on which it was delivered to the insured, is held in Meridian L. Ins. Co. v. Milam, 172 Ky. 75, 188 S. W. 879, which further holds that the day on which a policy of life insurance bears date is included in reckoning the period after which it is incontestable.

Supplemental annotation as to the date from which the period to which a defense is limited in a life insurance policy is to be computed is appended to the foregoing case in L.R.A.1917B, 103.

Interstate commerce — state interference — pick-up refrigerator car service — interstate shipments. The Indiana Commission is held in Yaser v Evansville & I. R. Co. P.U.R.1917A, 232, to have no jurisdiction to require a railroad to restore a pick-up refrigerator car service, where the shipments made through such service are wholly interstate movements.

Judge — personal liability. That an action will not lie against a judicial officer for a judicial act, where there is jurisdiction of the person and the subject-matter, although it be alleged and proved that such act was done maliciously, or even corruptly, is held in the Oklahoma case of Waugh v. Dibbens, 160 Pac. 589, L.R.A.1917B, 360.

Landlord and tenant — act of trespassers. A stipulation in a lease that the lessee shall hold the lessor harmless from all damages occasioned by the bursting, leaking, or running of any washstand, etc., in, above, upon, or about the building in which the demised premises are situated, or by water coming in through the walls, it is held in LeVette v. Hardman Estate, 77 Wash. 320, 137 Pac. 454, will not include an injury occasioned by the tearing out of a washstand by trespassers upon a portion of the premises vacated by another tenant, causing a breakage of the water pipes.

The liability of a landlord to a tenant for damage by water is the subject of the note appended to this case in L.R.A. 1917B, 222.

Landlord and tenant — freezing of pipes — injury to tenant's property — liability. The owner of a tenement building who permits the water to remain in the pipes of a vacant tenement without precautions to prevent freezing when the temperature is such as to endanger it is held liable to the tenant of a lower floor whose property is injured by freezing and bursting of a water pipe in Moroder v. Fox, 155 Wis. 503, 143 N. W. 1040, annotated in L.R.A.1917B, 238.

Landlord and tenant — liability for faulty construction of building. That the property owner is not, in the absence of covenant or warranty, liable for injury to his tenant's goods by a leak in the roof, due to faulty construction of the building, is held in Levine v. McClenathan, 246 Pa. 374, 92 Atl. 317, annotated in L.R.A.1917B, 235.

Lease — by domestic to foreign corporation. A domestic lighting company, it is held, in the Maine case of Re Kittery Electric Light Co. P.U.R.1917A, 12, will not be denied authority to lease its property and franchises merely because the lessee is a foreign corporation.

Liens — promise to pay out of specified fund. A promise by an insolvent to pay specified creditors out of the proceeds of insurance on property which has been destroyed by fire is held in Parlin & O. Implement Co. v. Moulden, 142 C. C. A. 517, 228 Fed. 111, L.R.A.1917B, 130, to give them a lien on such proceeds which they may follow into property in which he has attempted to invest them as a homestead.

This seems to be a case of first impression as to the right to follow into a homestead a fund which has been specifically promised to be devoted to payment of debts, though the theory of an equitable lien by which the right was sustained in that case has received many other specific applications.

Master and servant — injury to insurance agent — arising out of employment. Injury to an insurance agent by the overturning of the automobile of a prospective customer, in which he had taken passage because of the opportunity afforded him of pressing his claims of the policy which he offered, is held in the Massachusetts case of Hewitt, Employee, 113 N. E. 572, L.R.A.1917B, 249, not to arise out of his employment within the meaning of the Workmen's Compensation Act, where he was not acting under direct orders, but on his own initiative.

Master and servant — workmen's compensation — going to work. An engineer on a tugboat, who, after his boat has been moved from its berth for protection from a storm, goes ashore for purposes of his own by crossing other vessels alongside of which it is moored, is held in the California case of Ocean Acci. & Guaranty Co. v. Industrial Acci. Commission, 159 Pac. 1041, L.R.A. 1917B, 336, not to be performing a service within the scope of his employment and growing out of and incident thereto, within the meaning of the Workmen's Compensation Act, when attempting to return to the boat, although, when reaching the place where he left the boat, and finding it returned to its rightful berth, he receives from the captain a direction to come over to it, in response to his inquiry as to what he is doing over there.

Master and servant — workmen's compensation — injury in leaving property — course of employment. A miner, at the end of his day's work, changed his clothes, and, still carrying a miner's lamp, started towards the bottom of the shaft with the intention of ascending to the top of the mine. About 200 feet from the room where he had been at work, and about one-half mile from the bottom of the shaft, his face came in contact with a piece of slate which was hanging from the roof of the mine, and one of his eyes was destroyed. It is held in Sedlock v. Carr Coal Min. & Mfg. Co. 98 Kan. 680, 159 Pac. 9, L.R.A.1917B, 372, that the injury arose out of and in the course of his employment within the meaning of the Workmen's Compensation Act, and that under its provision he is entitled to compensation for the injury.

Monopoly and competition — telephones — cut rate to retain business. A telephone company which is the first to establish an exchange in a town, it is held, in the Oklahoma case of Ft. Supply Teleph. & Teleg. Co. v. Pioneer Teleph. & Teleg. Co. P.U.R.1917A, 188, will not be prevented from cutting the rate, even to an unremunerative point, lower than its rate in other towns, in order that it may retain the business which has become competitive through the establishment of a second exchange in the town.

Municipal corporations — use of public funds — defeat of statute. A corporation created by the legislature for governmental and business purposes is held in the Washington case of State ex rel. Seattle v. Superior Ct. 160 Pac. 755, to have no power to use public funds raised by taxation to secure a nullification, by means of a referendum, of a statute increasing the number of its commissioners and limiting the amount of its bonded indebtedness.

The power of a municipal corporation or governmental body to use public funds to promote the passage, or to secure the defeat of a law, is treated in the note appended to the foregoing case in L.R.A. 1917B, 354.

New trial — prejudicial statement in presence of juror. A new trial, it is held in the Maine case of York v. Wyman, 98 Atl. 1024, annotated in L.R.A.1917B, 246, will be granted in case a relative of plaintiff states in the hearing of a juror that material witnesses for defendant had lied and that plaintiff should get the case, whether the juror was influenced or not.

Nuisance — operation of coal mine. The operation of a coal mine in the ordinary way with the precautions usually and customarily prevailing in such plants is held not a nuisance of which those located in the vicinity can complain in the Pennsylvania case of Alexander v.

Wilkes-Barre Anthracite Coal Co. 98 Atl. 794, annotated in L.R.A.1917B, 310.

Officer — offer to abate salary — effect. An offer by a candidate for common pleas judge, made for the purpose of effecting his election to office, that in the event of his election he will accept for his judicial services only the stipulated salary payable by the state, and that he will accept nothing that may be due and payable to him from the local or county treasury, is held to be against public policy in Prentiss v. Dittmer, 93 Ohio St. 314, 112 N. E. 1021, and an offense within the purview of § 5175–26, General Code, which, if proved, invalidates his election. Section 26 of the Corrupt Practices Act (102 Ohio Laws p. 327), now § 5175–26, General Code, provides that any person is guilty of a corrupt practice if he, in connection with or in respect of any election, contributes, or offers to contribute, any money or valuable consideration for any other purpose than those detailed therein. It provides further than any offer to contribute or expend any money or thing of value for any purpose whatever, except as therein provided, "is hereby declared to be corrupt practice and invalidates the election of any person guilty thereof."

The authorities upon promise to accept less than the compensation fixed by law as affecting the right to hold office accompany the foregoing case in L.R.A. 1917B, 191.

Officer — personal liability of county commissioner. The individuals composing a board of county commissioners are held personally liable in the Oklahoma case of Strong v. Day, 160 Pac. 722, L.R.A.1917B, 369, to any person suffering damage thereby, and who is himself not guilty of contributory negligence, for their negligent failure to repair a county bridge under their care and supervision; there being sufficient public funds available for making such repairs.

Officer — promise to release portion of salary — estoppel. A public official is held not estopped in Galpin v. Chicago, 269 Ill. 27, 109 N. E. 713, annotated in L.R.A.1917B, 176, from claiming fees to which by law he is entitled by the fact that, prior to his election, he stated publicly that he would pay them into the treasury, and that after election he complied with the promise.

Public utilities — what are — private transmission line over public property. A private manufacturing corporation is held in the New York case of Fulton Light, Heat, & P. Co. v. Granby Pulp & Paper Co. P.U.R.1917A, 76, not to assume to act as an electrical corporation within the meaning of the New York Public Service Commissions Law merely because its line for transmitting current for its exclusive use passes over public property.

Rates — electricity — moving picture machine — power or lighting rate. That the power rate, and not the lighting rate, should be applied to electric current for motor generator sets or mercury arc rectifier for use in operating a picture machine in a moving picture theater, is held in the Montana case of Orpheum Theater v. Helena Light & R. Co. P.U.R.1917A, 65,—the power, however, not to be used for generating electricity for illumination or other purposes.

Sunday — barber shop — work of necessity. The operation of a barber shop on Sunday for the service of all applicants, for the customary fee, is held not a work of necessity within the exception of the Sunday Law, in Gray v. Com. 171 Ky. 269, 188 S. W. 354, annotated in L.R.A.1917B, 93.

Witness — protection from suit. A resident of another state who comes into this state as a witness in a cause pending in one of our courts, and who is entitled to protection from the service of process while attending, is held not to lose the protection by not departing from the state on the first train after the termination of his service as such witness in the Minnesota case of Turner v. Randall, 159 N. W. 958, which is accompanied by recent cases on the subject in L.R.A. 1917B, 250.

Recent English and Canadian Decisions

[Note.—The more important of these decisions will be reported, with full annotations, in British Ruling Cases.]

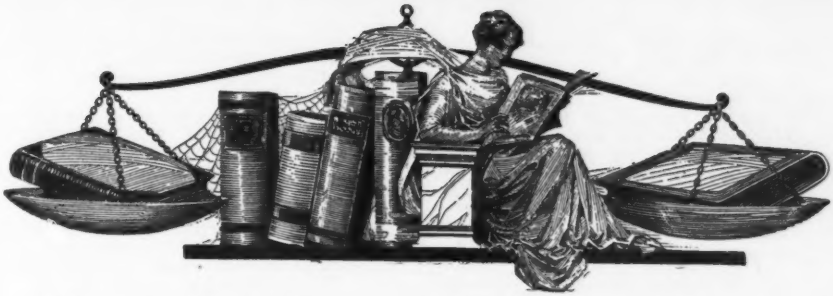
Insurance — assignment of life policy in event of assignor dying before assignee — validity. The owner of a policy of life insurance gave it to his housekeeper with the following signed indorsement: "I authorize"—naming her—"my housekeeper and no other person to draw this insurance in the event of my predeceasing her, this being my sole desire and intention at time of taking this policy out, and this is my signature." This assignment was held by the English court of appeal, in Re Williams [1917] 1 Ch. 1, to be inoperative on the ground that it was an incomplete gift, being either a revokable mandate or authority which was revoked by the death of the assignor, or, if taking effect on the death, a testamentary document not duly executed.

Municipal corporation — annexation of territory — divisibility of payment to be made by railroad under franchise granted by county. That the payments which an electric railway company agrees to make annually upon a mileage basis as a condition of its franchise to operate cars over a county road do not become apportionable between the county and the city upon the annexation by the city of territory including a portion of such road, even though the covenant of the railroad company runs to "successors and assigns," is held in Wentworth County v. Hamilton Radial Electric R. Co. 54 Can. S. C. 178.

Shipping — bill of lading — exception from liability for breakage — damage to cargo while landed for purpose of restowing. That an ocean carrier, in temporarily landing machinery forming part of a general cargo at an intermediate port for the purpose of putting it in another hold, as was necessary for the safe stowage of the cargo and for the proper trim of the ship, does not commit any breach of the contract of carriage, and is therefore protected by an exception in the bill of lading against liability for loss or damage arising from breakage, is held in Bruce Marriott & Co. v. Houlder Line [1917] 1 K. B. 72.

War — alien enemy — status of domestic corporation carrying on business in enemy territory. A company incorporated in England, the management and control of which is exercised in England by an English board of directors, and the great majority of the shareholders in which are British subjects or neutrals, cannot be considered as having, in the British courts, the status of an alien enemy by reason of the fact that its property is situated in enemy territory, where it has a duly constituted agent for the transaction of its business, according to the decision of the English court of appeal in Re Hilckes [1917] 1 K. B. 48.

Wills — gift to nephews and nieces — inclusion of children of illegitimate sister. Where a testator who had given his residuary estate in trust for "all or any of my nieces and nephews" went on to declare that the natural son of an illegitimate sister, and the natural son of a legitimate brother, "shall be entitled to a share equally with my other nephews and nieces," the context so sufficiently enlarges the gift as to include within the description of nephews and nieces the children of another illegitimate sister, especially where it appeared that the testator and his brothers and sisters, both legitimate and illegitimate, were all brought up together as one family, and that the sons of the illegitimate sister were treated by him as his nephews. Re Helliwell [1916] 2 Ch. 580.



New Books and Periodicals

Men disparage not antiquity who prudently exalt new inquiries.—Sir Thomas Browne.

"Business Competition and the Law." By Gilbert H. Montague (G. P. Putnam's Sons, New York) $1.75 net.

Some of the everyday trade conditions affected by the Anti-Trust Law are discussed in this book. It deals wholly with practical questions and shows the dangers of aggressive salesmanship. "These questions," states the author, "present themselves daily as spelling either success or failure for great merchandising organizations, for nation-wide sales campaigns, for carefully conceived and elaborately executed marketing plans, and for the network of hundreds of thousands of distributing channels that create national distribution among millions of consumers for scores of competing producers and manufacturers."

This volume, while intended for business men, is founded on court decisions and legal proceedings and contains an extensive chapter devoted to bibliography and authorities. It is a forceful discussion of the present status of a relatively new legal subject.

"Unfair Competition." By William H. S. Stevens, Ph. D. (The University of Chicago Press, Chicago, Ill.) $1.50 net.

This book is designed for the legal profession and also for business men. It endeavors to set up an economic criterion for the determination of what constitutes fair and unfair competition. Twelve forms of "unfair competition" are defined and discussed. They include such methods as local price cutting; operation of bogus independent concerns; fighting instruments; conditional requirements; exclusive arrangements; black lists, boycotts, white lists; rebates and preferential arrangements; engrossing machinery or goods used in the manufacturing process; espionage; coercion, threats, intimidation; interference and manipulation.

So far as possible the work has utilized actual testimony in illustrating various methods. A considerable proportion of this testimony is from court proceedings, and was given under oath.

The author believes that important results may be expected from the legislation designed to destroy unfair practices, and that it will prove a forward step on the road to the ultimate solution of the trust problem.

This work will prove of interest and value to many readers.

"The Morals of Monopoly and Competition." By Homer B. Reed, Ph. D. (George Banta Publishing Co., Menasha, Wis.)

The change in business practices and morals, which is evidenced by the opinions and utterances of judges, legislators, and business men, is the theme of this thought-provoking volume. The change from private to public morals with carriers and large industrial combinations, and the change from private to public service methods in determining prices, form the subjects of the chapters.

The author views the steps taken in putting big business under the public law and under the direction of public experts as a matter of congratulation. He believes that if the interests of the consumer are to be as well protected as under the old competitive régime, that large manufacturing and marketing combinations must be treated as public service corporations, governed by public law instead of by private law, as has been done in the case of the railroads. This change in business conditions, he anticipates, will bring about a corresponding change in the working principles from charging what the commodity or traffic will bear to charging prices and rates yielding a fair profit over cost of production or service.

"The Man in Court." By Frederic De Witt Wells (G. P. Putnam's Sons, New York) $1.50.

The publishers describe this book as a humorous visualization of the trial of court actions. Mr. Herbert C. Hoover, of the Commission for Relief in Belgium, says of the work: "If its theme, that the courts should be an organ of investigation instead of an arena for trial by battle, can be implanted

in the American mind, a great step will have been made in progress."

The author has tried to show the point of view of the ordinary man in a law court, as the various proceedings of a trial take shape before him. The opening chapter portrays the vital and pitiful drama of the Night Court. Following chapters discuss such subjects as "The Judge," "The Strenuous Lawyer," 'The Worried Client," "The Confused Witness," "The Anxious Jury," and similar themes.

The work is written in a pleasing narrative style, and is crowded with anecdote and incident. It is of interest to both lawyer and layman.

"Great Britain's Part." By Paul D. Cravath (D. Appleton & Co., New York) $1.00.

This volume records the impressions of a prominent member of the New York bar who was permitted to visit the British and French battle front during the period of the Somme offensive. He feels that England's achievements in the European War have not been fully appreciated. He describes the organization of the army, the method of bringing up ammunition and food supplies, and the maintenance of hospitals and prison camps. His observations will furnish the reader a clearer idea of the importance of the war and of the unparalleled scale on which it is being waged.

Principles of the Federal Law. By H. W. Chaplin, 1 vol. $7.50.

Law of Conversion. By R. D. Bowers, 1 vol. $7.50.

Recent Articles of Interest to Lawyers

Attorneys.

"Addresses Delivered at Annual Meeting of 1916: Elihu Root (President's Address), 'Public Service by the Bar.' "—2 American Bar Association Journal, 736.

"A Few Ways to Secure Law Practice."—28 American Legal News, 17.

"Should an Attorney for Creditors Represent Either the Receiver or the Trustee?"—28 American Legal News, 23.

"The Ethical Lawyer."—23 Case and Comment, 920.

"The Temple and the Inns of Court."—2 St. Louis Law Review, 1.

"William E. Borah, 'The Lawyer and the Public.' "—2 American Bar Association Journal, 776.

Banks.

"Modern Banking and Trust Company Methods."—34 Banking Law Journal, 93.

"National Banks as Trustees."—1 Minnesota Law Review, 232.

Bills and Notes.

"History of the Law Merchant."—23 Case and Comment, 925.

Carriers.

"The Carmack Amendment in the State Courts."—15 Michigan Law Review, 314.

Charities.

"Charitable Gifts in Minnesota."—1 Minnesota Law Review, 201.

Child Labor.

"Is the Federal Child Labor Statute Constitutional?"—23 Case and Comment, 906.

Collections.

"Short Cuts in Tracing Debtors."—28 American Legal News, 19.

Commerce.

"Interstate Commerce in Intoxicating Liquors Before the Webb-Kenyon Act. III."—4 Virginia Law Review, 353.

Conflicting Laws.

"Conflict of Laws as to Bills and Notes, III."—1 Minnesota Law Review, 239.

"Studies in the Conflict of Laws—Diversity of Laws and the Extent to Which Uniformity is Desirable."—84 Central Law Journal, 123.

"Studies in Conflict of Laws—Uniformity Through Codification of the Rules of Private International Law."—84 Central Law Journal, 140.

Constitutional Law.

"Constitutionality of Provisions of Prohibition Act Relating to Transportation."—2 Virginia Law Register, 822.

"Frank J. Goodnow, 'Private Rights and Administrative Discretion.' "—2 American Bar Association Journal, 789.

"Inalienable Rights of Property: A Study of Contract Obligations and Other Vested Rights."—5 California Law Review, 209.

"Is the Federal Child Labor Statute Constitutional?"—23 Case and Comment, 906.

"The Proposed Woman Suffrage Amendment and the Amending Power."—65 University of Pennsylvania Law Review, 403.

Contraband.

"Contraband Lists in the Present War."—4 Virginia Law Review, 371.

Copyright.

"The Scope of the Law of Copyright."—4 Virginia Law Review, 385.

Corporations.

"Can the Capacity of a Corporation to Take a Conveyance of Real Estate Be Called in Question in a Collateral Way by Anyone Other Than the State?"—84 Central Law Journal, 174.

Courts.

"Is Our System of Courts Democratic?"—23 Case and Comment, 902.

"Problems of Law's Mechanism in America—The Judicial Problem."—4 Virginia Law Review, 342.

"The Extension of Judicial Review in New York."—15 Michigan Law Review, 281.

Criminal Law.

"Economy in Criminal Prosecutions."—5 Kentucky Law Journal, 3.

Diplomacy.

"The Control of Foreign Relations."—11 American Political Science Review, 24.

Elections.

"The Proposed Woman Suffrage Amend-

ment and The Amending Power."—65 University of Pennsylvania Law Review, 403.

Electricity.

"Electrolysis Damages from Single Trolley Electric Railways."—23 Case and Comment, 886.

Engineering.

"Engineering Factors in the Law of Waters."—23 Case and Comment, 873.

Equity.

"Enforcement in Equity of Adoption Contracts and Those in the Nature of Adoption Contracts."—84 Central Law Journal, 157.

Evidence.

"Reputation With Respect to Books of Original Entries."—21 Dickinson Law Review, 135.

Government.

"Lindley M. Garrison, 'Democracy and Law.'"—2 American Bar Association Journal, 756.

"The State as Pater Familias."—84 Central Law Journal, 138.

Injunction.

"Enjoining Judgment for False Return by Sheriff."—2 Virginia Law Register, 801.

Internal Revenue.

"Internal Revenue and the Public."—23 Case and Comment, 897.

Intoxicating Liquors.

"Constitutionality of Provisions of Prohibition Act Relating to Transportation."—2 Virginia Law Register, 822.

Judges.

"The Superannuation of Federal Judges."—20 Law Notes, 225.

Jurisprudence.

"Socialization of the Law."—23 Case and Comment, 911.

Law and Jurisprudence.

"Problems of the Law's Mechanism in America."—4 Virginia Law Review, 337.

"The Changing Legal Order."—28 American Legal News, 5.

"The Forensic Theory of Law."—2 St. Louis Law Review, 11.

Master and Servant.

"Public Regulation of Wages, Hours, and Conditions of Labor of the Employees of Public Service Corporations."—6 National Municipal Review, 31.

Municipal Corporations.

"How Not to Plan Cities."—6 National Municipal Review, 57.

"How the Commission-Manager Plan Is Getting Along."—6 National Municipal Review, 69.

"Municipal Preparedness."—6 National Municipal Review, 1.

"Municipal Recreation—A Review of Recent Literature."—6 National Municipal Review, 49.

"New Orleans' Experience under Commission Government."—6 National Municipal Review, 73.

"Obstacles to Municipal Progress."—11 American Political Science Review, 76.

"The Buffalo Charter."—6 Municipal Review, 79.

"The City Secretary's Office of Frankfurt-on-the-Main."—6 National Municipal Review, 41.

"The Evolution of Types of City Government in the United States."—6 National Municipal Review, 19.

Navy.

"The Department of the Navy."—11 American Political Science Review, 59.

Physician and Surgeon.

"The Law and the Doctor."—33 Medico-Legal Journal, 7.

Pleading.

"The Spirit of Code Pleading."—11 Illinois Law Review, 517.

Politics.

"The Scientific Spirit in Politics."—11 American Political Science Review, 1.

Practice and Procedure.

"A Bibliography of Procedural Reform: Including Organization of Courts."—11 Illinois Law Review, 451.

"The Pennsylvania Practice Act of 1915."—65 University of Pennsylvania Law Review, 424.

"The Science of Practice: The Young Practitioner's Need."—11 Illinois Law Review, 489.

Principal and Agent.

"Undisclosed Principal in California."—5 California Law Review, 183.

Prostitution.

"The Mann White Slave Law."—33 Medico-Legal Journal, 4.

Race Consciousness.

"Pan-Turanism."—11 American Political Science Review, 12.

Railroads.

"Defects of Physical Valuation of Railways as a Basis for Rate Making."—23 Case and Comment, 880.

Strikes.

"Limiting the Right to Strike."—84 Central Law Journal, 121.

Trusts.

"Investment of Trust Funds in Participating Mortgages."—34 Banking Law Journal, 100.

"National Banks as Trustees."—1 Minnesota Law Review, 232.

"Trust Company Held Liable for Shrinkage in Trust Estate."—34 Banking Law Journal, 85.

Waters.

"Engineering Factors in the Law of Waters."—23 Case and Comment, 873.

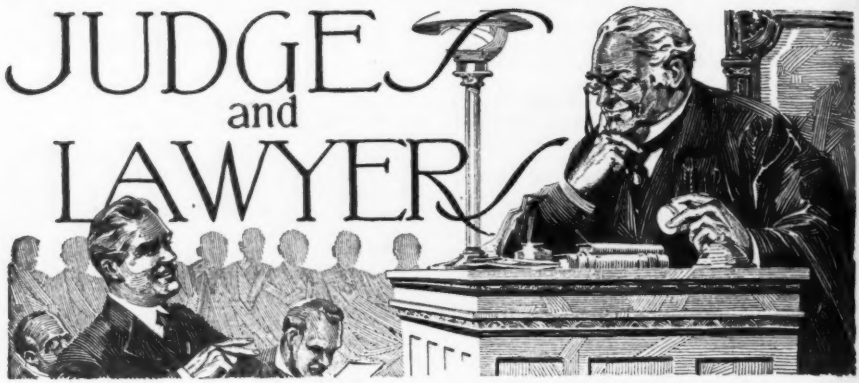
"Injury Without Damage as Illustrated by a Point in the Law of Waters." (Right of Prior Appropriator of Water to Change Place of Use or Point of Diversion "If Others are not Injured by the Change.")—5 California Law Review, 199.

"Observations on the Illinois Decisions Affecting Proprietary Rights in Illinois Lands Underlying Lakes and Streams."—11 Illinois Law Review, 540.

"The Great Shoshone Dam."—23 Case and Comment, 892.

Wills.

"Three Generations of Romance and Litigation: The Celebrated Gaines Will Cases."—11 Illinois Law Review, 464.



A Record of Bench and Bar

Baron Finlay

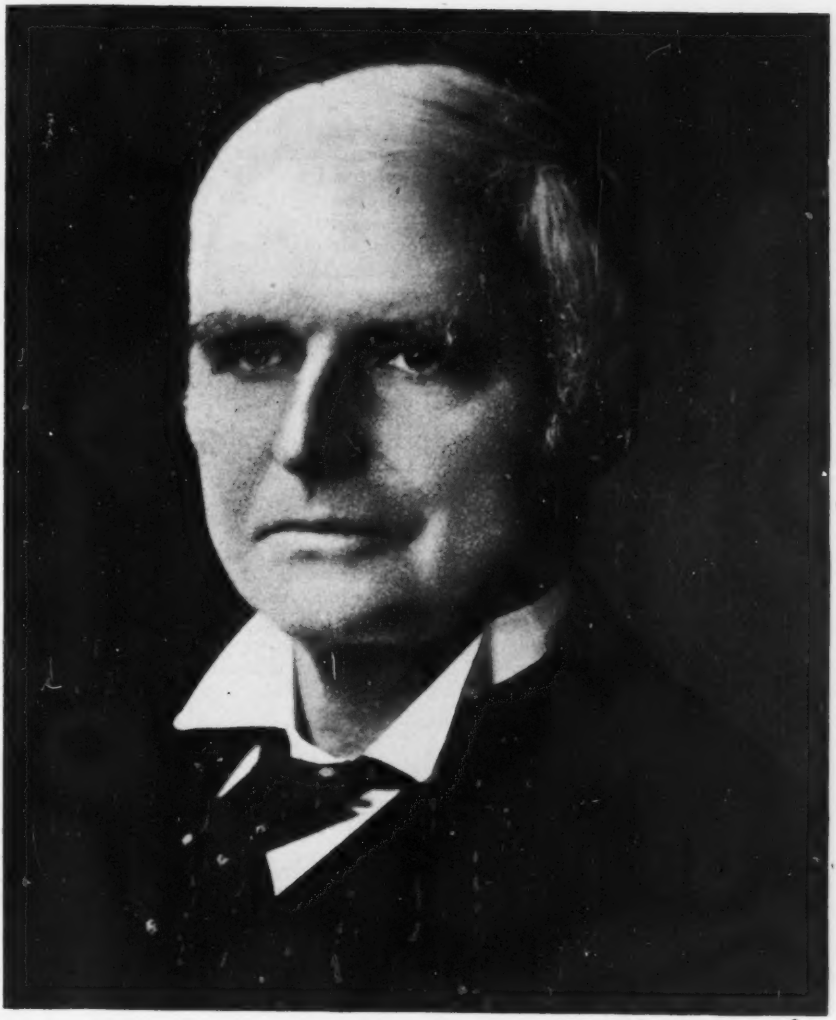
Lord High Chancellor of Great Britain

BY W. E. WILKINSON, LL.B (LOND.)

A Solicitor of the Supreme Court, England

THE summit of a great career was reached when in December last Sir Robert Finlay became Lord High Chancellor of Great Britain, the most august legal office in the United Kingdom. This crowning achievement has indeed been attained somewhat late in life,—for the new Lord Chancellor is seventy-four years of age,—but his promotion to the Woolsack has been delayed by reason of the political party to which he belongs. Being a Conservative, it was of course impossible for Lord Finlay to become Lord Chancellor at any time during the ten years before the War when the Liberal Party was in power, and during the preceding twenty years (1885–1905) the Woolsack had been occupied by that veteran among judges, Lord Haldane, who, at the age of ninety-three, still sits in the House of Lords to hear appeals to the highest court in the land. Upon the formation of the coalition government in 1915, Lord Finlay's name was freely mentioned as a likely successor to Lord Haldane, but, apparently, the balance of parties in the new ministry would have been disturbed if the Lord Chancellor had not been a Liberal. Consequently, Lord Buckmaster was unexpectedly made Lord Chancellor, a position which he retained for eighteen months. When upon the formation of the new ministry, the great office had again to be filled, the satisfaction was universal when the choice fell upon Sir Robert Finlay, as he then was.

Lord Finlay was born in Edinburgh seventy-five years ago, and educated at Edinburgh Academy and later at the University, where he took the degree of Doctor of Medicine, intending to practise as a medical man. The law, however, attracted him and he became a student of the Middle Temple, studying under Sir John Day. Called to the bar in 1867, the future Lord Chancellor practised in London and on the home circuit. He took silk in 1882 and entered Parliament as a Liberal in 1885. Upon the split in the Liberal party over Mr. Gladstone's Home Rule Bill, Mr. Finlay became a Liberal Unionist. He was at the very top of the profession when, on the formation of the Unionist Government in 1895, Mr. Finlay became Solicitor Gen-



Photograph from Underwood & Underwood, N. Y.

SIR ROBERT FINLAY

Lord High Chancellor of England

eral and received a knighthood. In 1900, when Sir Richard Webster was promoted to the bench, Sir Robert Finlay became Attorney General, a position which he held until the fall of the Unionist Government in the autumn of 1905.

Lord Finlay has taken part in many famous legal disputes. As Solicitor General he appeared for the prosecution of Dr. Jameson and his comrades after the futile "Jameson Raid," while as Attorney General he represented Great Britain in the Alaska Boundary Arbitration in 1903 and in the Venezuelan Claims Arbitration before The Hague Tribunal in that year. For many years Lord Finlay's practice has chiefly lain in cases before the House of Lords and the Judicial Committee of the Privy Council, and his reputation among Colonial lawyers is very great. He appeared for Canada and Newfoundland in the North Atlantic Coast Fisheries Arbitration at The Hague in 1910, and opened the British case. Lord Finlay became Lord Rector of Edinburgh University in 1902. His versatility is great. In addition to a great knowledge of International Law and a large acquaintance with Roman-Dutch Law, the new Lord Chancellor is a classical scholar of no mean order. It is said that the late Lord Esher, M. R., once paid Lord Finlay a great compliment. "What use is it," said the judge to a junior counsel, "your trying to convince us when one of the greatest advocates at the English bar has failed to do so?"

Hon. Park Trammell

U. S. Senator from Florida

BY C. D. CLOUGH

MY MIND carries me back thirty odd years when Park Trammell and myself were small boys living in the country in Polk county. We were farmer boys. In those youthful days we played together and worked together. I chummed with him, plowed with him, chopped wood with him, and we hunted together in the woods. We packed oranges together, and one season when work was scarce we went to the woods with our axes and cross-cut saw and cut wood and sold it in Lakeland for a livelihood. Later in young manhood we were in the newspaper business together. I have set type at the case with him, read proof with him, and we have mingled our editorials on the same country weekly. Shortly after I married, and he, too, had entered into wedded bliss, we rented together and lived in the same house. With these prefatory remarks I think I may say that I am well acquainted with Park Trammell.

In early boyhood he lived in a log house in the country, and his school advantages were those afforded by the short term schools of the pioneer days of South Florida, but even these were his for a limited while. He began to make his own living when a boy. He never considered himself too good to do any kind of honest work. When about sixteen years old he went to Tampa to take a position in a general mercantile store.

From his earnings in Tampa, where he filled different positions for about five years, he assisted in meeting his father's obligations and saved the money with which he paid his way through law school. To better equip himself with an education, he often burned the midnight oil.

He came home to Lakeland from law school in 1899 and set about fitting up an office in which to practise his profession. His savings were exhausted, his office was necessarily an humble one. A plain office table, made with his own hands, two or three cheap chairs and fifteen or twenty law books completed his first office equipment. Getting a foothold was not easy, but in order to pay expenses while getting a start as a young lawyer he kept books at night and worked as a traveling salesman a part of each week.

HON. PARK TRAMMELL

Former Governor of Florida who now represents his state in the United States Senate

His father had met financial reverses, and though working hard to get a start in life, he helped his father to a considerable extent in paying off his debts. Soon after this his father died. There were four younger sisters left orphans, his mother having died some years before. Assisted by a younger brother, he assumed their care and support.

Notwithstanding unusual difficulties, he demonstrated that he was possessed of excellent ability, and began to establish a good law practice. It was apparent that he had before him a promising future. He was elected mayor of Lakeland, and his administration met with approval. The people of Polk county elected him to the House of Representatives, and he served his first session in 1903. He was then elected to the state senate, and though one of the youngest members of that body was chosen president of the senate. His record in the state senate brought him into state-wide prominence, and in 1908 he was elected attorney general, and his four years' service there so met the commendation of the people that in 1912 he was chosen governor of the state. Last November he was elected United States Senator for the six years' term beginning March 4th. His experience and training have well qualified him to render splendid service in the Nation's highest legislative body.

Farewell Banquet to El Paso Lawyer.

WILLIAM H. BURGES, who recently left El Paso to become a member of a law firm in Chicago, was the guest of honor of 114 hosts who tendered him a farewell banquet. In 1909 and 1910 Mr. Burges was president of the Texas Bar Association. In 1912 to 1915 he was a member of the executive committee of the American Bar Association. He is a member of the American Political Science Association, of the International Law Association, and of the American Society of International Law, a member of the American Academy of Political and Social Science and of the Selden Society of the Texas Historical Association, and was a delegate to the Universal Congress of Lawyers and Jurists which met at St. Louis in 1904.

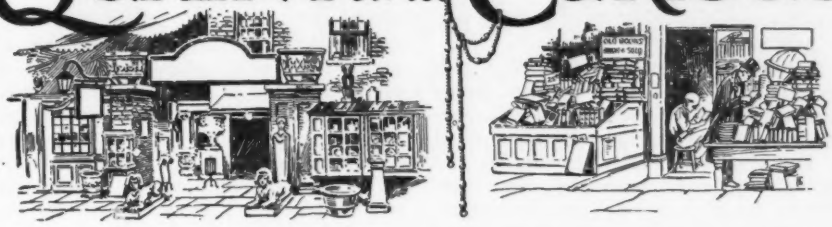
William H. Burges, son of W. H. Burges and Elizabeth Rust Burges, was born at Seguin, Texas, November 12, 1867. He graduated from the law department of the University of Texas in 1889, and in that year commenced the practice of his profession in El Paso. The little city to which young Burges came in 1889 was then emerging from its position as an outpost of the western frontier. Years of lawlessness and crime were to pass before El Paso, as a community, was to desire, much less deserve, the reputation of a law-abiding community, but even at that time a few bold and aggressive citizens had resolved that the reign of the gunman, bunco-steerer, and tinhorn gambler should cease.

Into this fight William H. Burges threw himself with energy, with persistence, and with daring. Elected to the city attorneyship in 1893, at what was destined to be one of the turning points in the history of El Paso, Mr. Burges led the legal battle which, launched against seemingly overwhelming odds, and with varying fortunes, which at times discouraged all but the stoutest, culminated ten years later in driving from El Paso the licensed gambling houses, with all their attendant evils that preyed upon the life of the community.

Since he retired from the city attorneyship in 1895, Mr. Burges has never held, nor been an applicant for, a public office of profit. He occupied the useful and honorable office of regent of the state university from 1911 to 1914, but his splendid powers have been devoted to the practice of law and the manifold activities of the public-spirited citizen.

In 1897 Mr. Burges entered into a legal partnership with Senator W. W. Turney, and for twenty years of untiring labor, mutually solaced by the most cordial ties of friendship, the firm has occupied its place in the legal annals of the southwest.

QUAINT and CURIOUS



A sheaf of gleanings culled from wayside nooks.

No Partiality. Wishing to have his estate of $100,000 divided fairly among the poor of the three counties about his home, Randolph McMullen, a farmer who died recently in Tyrone township, Pennsylvania, devised a system of checks and balances which would have delighted the makers of the Constitution. He directed that the money should be divided by three trustees, a Protestant minister, a Catholic priest, and a Jewish rabbi.—Boston Transcript.

Officially Classified. In the Bureau of the Census at Washington acts against the law are recorded under a few general heads, such as murder, burglary, &c.

An officer of the bureau tells of a woman clerk who was puzzled by an entry she encountered in one of her slips. The crime as set down was "Running a blind tiger." After due reflection the woman placed it under the head, "Cruelty to Animals."—New York Times.

Sure Sign. In a southern town there practised a gentleman of the old school of lawyers. He cherished his black frock coat, slouch hat, and always carried a gold-headed cane. When court was in session, he could be seen going to and from the courthouse with prepossessing air, while humbly following him was an old negro servant, proud to carry his law books.

The "Cunnel" enjoyed the distinction of losing but few of his cases, and he had no more ardent admirer in this respect than old uncle Ephraim, himself.

On a hot summer's day, a hard and tediously fought case was in progress. In the midst of the trial, old Ephraim was seen to emerge from the little courthouse and, somewhat subdued, set out in the direction of the "Cunnel's" office

"Well," hailed a bystander, "yer ain't licked, air yer, Unc' E'fm?"

"Not yit, suh."

"Yer don't mean ter say th' Cunnel's goin' ter lose?"

"Yes," said the old negro sorrowfully, "we's gwin' ter lose dis case."

"Yo' seem pow'ful certain!"

"How's I know, you mean?" The old negro rolled his amber-colored eyes upward and peered at the man over his spectacles. "Well, it's dis a'way. De Cunnel sont me fer mo' law books, an' whenever he sends me fer a second a'mful o' books, I knows we's gwin ter lose."

Quotes Lincoln on Law. Dr. Harlan F. Stone, dean of the Columbia University Law School, observed Lincoln's Birthday by reading to the senior class two excerpts from the writings of the martyred President. Both contained a significant message for the youthful lawyer. The first was a letter Lincoln wrote on September 25, 1860, to J. M. Buchanan of Springfield, Illinois, in which he said: "Yours of the twenty-fourth, asking the best method of obtaining a thorough knowledge of the law, is received. The mode is very simple, though laborious and tedious. It is only to get the books and to read and study them carefully. Begin with Blackstone's Commentaries, and after reading it carefully through, say twice, take up Chitty's

Pleadings, Greenleaf's Evidence, and Story's Equity in succession. Work, work, work, is the main thing."

The other quotation, from a law lecture Lincoln delivered July 1, 1850, was in part as follows:

"There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common,—almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief,—resolve to be honest at all events."

Old Court Docket. Warped and crusted with the dust of almost a century and a half, the original docket of the quarter sessions court for Philadelphia county, covering the years from 1773 until 1780, inclusive, reveals many interesting procedures and punishments in the city's legal history.

The principal punishment meted out to offenders of the law was a whipping at the city's whipping post. Occasionally a term of imprisonment was imposed in addition to lashings at the post. A unique sentence was imposed on a woman in March 1779. Elizabeth Powers was her name, and the judgment of the court says "that she be carted on Wednesday next between the hours of 10 and 12 in the forenoon around four of the most public squares in this city, that she pay a fine to this state of £1,000 and the cost of prosecution; that she give security in £2,000 for her good behavior for twelve months; that she be committed until this sentence is complied with."

A ducking in the Delaware river in this season of the year would probably not be much of a punishment. But if the weather conditions in March, 1779, were anything like they were in March, 1916, such a sentence would be extremely unpleasant. However, Ann Maise, convicted of being "a scold," was ordered "publicly ducked in the river Delaware at the end of Market street on the second Wednesday in the month of March, between the hours of 10 and 12 forenoon."

The old document, says the Philadelphia Inquirer, is regarded as the most sacred treasure in the office of the clerk of the book are brittle from age and of quarter sessions. The faded leaves broken along the edges, but the entries, all of which were made in almost perfect chirography, are easily legible.

"Spooning Room" in Court. Husbands and wives who allow their troubles to reach the Chicago court of domestic relations hereafter will have an opportunity to make up in a little room attached to the court, which is being fitted up for that purpose. "The purpose will be to bring out the old affection that the couples held for each other when they were courting," said the judge. "It is my purpose to get them to spoon all over again, and then go home and live as they ought to."—Butte Post.

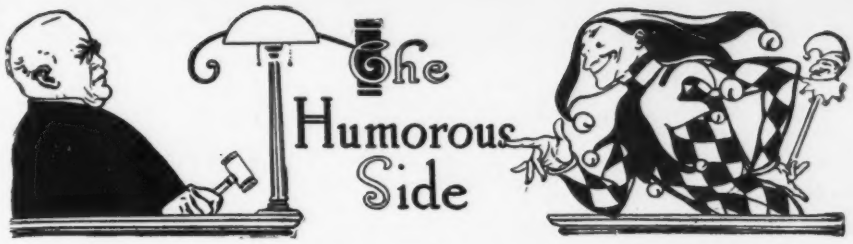
Captured Speeding. A well known judge was arrested in Santa Ana recently for rounding a corner too sharply in his automobile.

The judge was returning to Los Angeles from San Diego, where he had been for the week-end, and he was in such a hurry to get back to hold court that he cut a corner sharply. The eagle-eyed traffic cop swooped down on him instantly.

The judge pleaded guilty, for he had been caught in the act, but so eloquently did he plead his case that he was released without a fine.

War Cause of Divorce. "I'll go back to him if he will concede the allies will win," said Mrs. H. Decker, Russian, in the domestic relations court.

"I'll never do that," answered Decker, German. They were granted a divorce. —Nebraska Legal News.



A sense of humor is one of the most precious gifts that can be vouchsafed to a human being.

A Careful Witness. Not long ago a man was charged at a country court with trespassing, and also with shooting some pigeons which belonged to a farmer.

In giving his evidence the farmer was exceedingly careful, even nervous, and the lawyer for the defense endeavored to frighten him.

"Now," he remarked sternly, "remember you're on oath. Are you prepared to swear this man shot your pigeons?"

"I didn't say he did shoot 'em" was the reply. "I said I suspected him of doing it."

"Ah! Now you're coming to it. What made you suspect the man?"

"Well, I first caught him on my land with a gun. Secondly I heard a gun go off and had seen some pigeons fall. Thirdly, I found four of my pigeons in his pocket—and I don't think them birds flew into his pocket and committed suicide for the fun of the thing."—Chicago News.

Most Suspicious. "It is a rule, to which most good lawyers adhere," observed a well-known attorney, "never to tell more than one knows. There was an incident in a western town wherein a lawyer carried the rule to the extreme.

"Counsel for one side objected to a person whose name was on the court's register for some purpose or other, on the ground that he was dead. The counsel on the other side declined to accept the assurance and demanded conclusive testimony on the point.

"Whereupon counsel for the other side arose and gave corroborative evidence as to the decease of the man in question.

"'But, sir, how do you know the man's dead?' demanded opposing counsel.

"'Well,' was the reply. 'I don't know. It's very difficult to prove.'

"'As I suspected. You don't know whether he's dead or not.'

"'No. But I do know this—they buried him about a month ago on suspicion!'"—Chicago Herald.

Highly Recommended. Judge Parry, in a recent article on "Rufus Choate, Advocate," says on occasion Choate would meet with his Sam Weller. Defending a prisoner for theft of money from a ship, a witness was called who had turned state's evidence, and whose testimony went to prove that Choate's client had instigated the theft.

"Well," asked Choate, "what did he say? Tell us how and what he spoke to you."

"Why," said the witness, "he told us there was a man in Boston named Choate and he'd get us off if they caught us with the money in our boots."—Pittsburgh Dispatch.

What Choate Couldn't Call Him. When Joseph H. Choate was ambassador to the court of St. James he was standing near the door as some of the guests at a reception were leaving. An Englishman, mistaking him for one of the footmen said—

"Call me Carriage."

Mr. Choate turned to him and said:

"How do you do, Carriage?"

"Why do you call me that?" demanded the astonished Englishman.

"Well," responded Mr. Choate dryly, "I couldn't very well call you Hansom."—Rochester Evening Times.

Not Fair. A leading milk distributor

was talking to a reporter about milk prices.

"But our adversaries' questions are not fair," he said. "Our adversaries are like the cross-examining lawyer.

" 'Is it true,' this lawyer asked a witness, 'that you were the only sober man at the banquet?'

" 'No, of course not,' the witness answered indignantly.

" 'Who was, then?' said the lawyer."

Stuttering Over "Long Distance" Too Expensive. There is a certain member of Congress who stutters except when he makes a speech or talks over the telephone. Recently he had occasion to call up a friend in Seattle on a matter of personal importance. When the transcontinental connection had been made the man in Seattle shouted through the phone:

"Who is talking?"

"This is 'Tom Smith,' " answered the Congressman at the capital end of the wire.

"No, it is not 'Tom Smith,' snapped the man in Seattle.

"Yes, it is 'Tom Smith,' I tell you, the Congressman fairly bellowed. 'Why do you doubt it?'

"Why, 'Tom Smith' stutters."

"Darn it, do you think I am going to stutter at a dollar a word?" the Congressman retorted, as he banged down the phone in disgust.—Nebraska Legal News.

Not the First Time. They tell a good law court story in Canada. A young lawyer, according to the report, pleaded before Justice Greenshields that a case in which the attorney's firm was interested should be postponed because the partner was busy in another court.

"Proceed," said Justice Greenshields. "We have the record, we have the judgment. We will help you."

"But," protested the young lawyer, "I have not studied the case."

"It matters not," came from the bench. "Proceed. We will help you."

"But, my lord," persisted the young man, "I know nothing about the case."

"Proceed, proceed," was the inexorable command. "It is not the first time you have appeared before this court in a case you knew nothing about."—Christian Science Monitor.

Quite So. A learned counsel on the defendant's side lost his temper as well as his case, and remarked rudely to the opposing lawyer. "Why do you so often use the words 'also' and 'likewise?' They both mean exactly the same, as far as I can see."

"By no means," said the other. "I'll show you the difference by example. Our learned friend the judge is a clever lawyer; you are a lawyer also, but not likewise."—New York Globe.

More Severe Punishment. Lawyer (to fair client): "Don't you think this cash offer of $20,000 from the defendant is a fair compromise for your wounded heart? Isn't prying that old tightwad from his twenty thousand shiny ducats punishment enough for his breach of promise?" Client: "No, indeed! I want him to marry me!"—Judge.

So Sensitive. An attorney was consulted by a woman desirous of bringing action against her husband for a divorce.

She related a harrowing tale of the ill treatment she had received at his hands. So impressive was her recital that the lawyer, for a moment, was startled out of his usual professional composure.

"From what you say this man must be a brute of the worst type!" he exclaimed.

The applicant for divorce arose and, with severe dignity, announced:

"Sir, I shall consult another lawyer. I came here to get advice as to a divorce, not to hear my husband abused!"—Chicago Herald.

Forged Ahead. Judge: "How came a man of your ability to stand here convicted of forgery?" Prisoner: "It is all owing to my taking good advice, your Honor. When I left school, my teacher told me with my talents to go and forge ahead."—Baltimore American.

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